

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPLE, INC., a California)	
corporation,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	11-CV-01846-LHK
SAMSUNG ELECTRONICS CO., LTD.,)	
a Korean business entity;)	
SAMSUNG ELECTRONICS AMERICA,)	
INC., a New York corporation;)	
SAMSUNG TELECOMMUNICATIONS)	
AMERICA, LLC, a Delaware)	
limited liability company,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF ROGER F. FIDLER

TAKEN ON BEHALF OF THE PLAINTIFF

SEPTEMBER 23, 2011

(Starting time of the deposition: 9:32 a.m.)

Job Number: 41966

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 APPLE, INC., a California)
4 corporation,)
5)
6 Plaintiff,)
7)
8 vs.) Case No.
9) 11-CV-01846-LHK
10 SAMSUNG ELECTRONICS CO., LTD.,)
11 a Korean business entity;)
12 SAMSUNG ELECTRONICS AMERICA,)
13 INC., a New York corporation;)
14 SAMSUNG TELECOMMUNICATIONS)
15 AMERICA, LLC, a Delaware)
16 limited liability company,)
17 Defendants.)

18 VIDEOTAPED DEPOSITION OF ROGER F. FIDLER,
19 produced, sworn and examined on September 23, 2011,
20 between the hours of nine o'clock in the forenoon and
21 eight o'clock in the evening of that day, at the
22 offices of Midwest Litigation Services, 401 Locust
23 Street, Suite 204, Columbia, Missouri 65201, before
24 William L. DeVries, a Certified Court Reporter (MO),
25 Certified Shorthand Reporter (IL), Registered
Diplomate Reporter, Certified Realtime Reporter, and a
Notary Public within and for the State of Missouri, in
a certain cause now pending in the United States
District Court, Northern District of California,
between APPLE, INC., a California corporation,
Plaintiff, vs. SAMSUNG ELECTRONICS CO., LTD., a Korean
business entity; SAMSUNG ELECTRONICS AMERICA, INC., a
New York corporation; SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC, a Delaware limited liability company,
Defendants; on behalf of the Plaintiff.

A P P E A R A N C E S

For the Plaintiff:

Ms. Jennifer Lee Taylor
Morrison & Foerster
425 Market Street
San Francisco, California 94105

For the Defendants:

Mr. Michael T. Zeller
Quinn Emanuel Urquhart & Sullivan
865 South Figueroa Street,
Los Angeles, California 90017

Mr. Michael D. Sadowitz
Quinn Emanuel Urquhart & Sullivan
51 Madison Avenue, 22nd Floor
New York, New York 10010

Also present:

Mr. John Niehaus, Videographer

Court Reporter:
William L. DeVries, RDR/CRR
Missouri CCR #566
Illinois CSR #084-003893

1 A. This up here?

2 Q. Yes.

3 A. It shows the -- the day and time, it shows
4 the number of pages that are loaded on the device, and
5 it shows the page number -- pages that I've saved.

6 Q. Okay. Could you turn the device or the
7 mock-up to the side?

8 A. Like this?

9 Q. No. I want to see the side.

10 A. The side?

11 Q. Yeah.

12 A. Uh-huh.

13 Q. So it looks to me like there's three layers
14 to the mock-up?

15 A. Uh-huh.

16 Q. What -- what do those three layers consist
17 of?

18 A. They're just plastic sheets that I was
19 using. I was trying to keep a weight of about one
20 pound. I felt that that's probably the appropriate
21 weight for a device that a person would carry.

22 Q. And then what's across the front of the
23 mock-up?

24 A. It's Plexiglas.

25 Q. Does the Plexiglas extend past where we

1 can't see it?

2 A. No. There is an edge, but it is flat with
3 a surface.

4 Q. No, that wasn't --

5 A. Uh-huh.

6 Q. That wasn't what I meant to ask.

7 A. Uh-huh.

8 Q. Are the dimensions of the Plexiglas the
9 same as the dimensions of the overall mock-up?

10 A. No.

11 Q. They are smaller than the overall mock-up?

12 A. Yes.

13 Q. How much smaller?

14 A. Probably about half to three-quarter of an
15 inch.

16 Q. Do they extend underneath the white frame
17 that's around the edge?

18 A. No.

19 MR. ZELLER: The question is --

20 MS. TAYLOR: No?

21 MR. ZELLER: Hold on. You need to allow me
22 to --

23 THE WITNESS: Okay.

24 MR. ZELLER: You want to slow down just a
25 little bit too I think --

1 THE WITNESS: Okay.

2 MR. ZELLER: -- for the court reporter,
3 but -- objection. I think the question is vague when
4 you say -- I think you said "they" or "it." Yeah, did
5 they extend underneath. I'm not clear what you mean
6 by "they."

7 Q. (By Ms. Taylor) So you said that there's
8 Plexiglas on the surface.

9 A. Yes.

10 Q. Okay. And can you illustrate for me where
11 the Plexiglas ends?

12 A. It ends about three-quarters of an inch
13 from the edge. The intent was to be able to remove
14 the Plexiglas so they could put different pages for
15 the display.

16 Q. I don't understand that. You're --

17 A. Since this was a mock-up --

18 Q. Yes.

19 A. -- the intent was to be able to show other
20 pages in this display. So I had a way to easily pull
21 the screen off to be able to -- to show other pages.

22 Q. So have you ever taken the screen off and
23 put other pages on it?

24 A. Yes, I have. Uh-huh.

25 Q. And how do you do that?

1 A. Just by popping off the -- the Plexiglas
2 and then putting another page in.

3 Q. Okay. It seems to be a little -- the frame
4 around the edge seems to be a little wider at the
5 bottom than it is at the top?

6 A. Anticipated probably a logo at that point
7 being at the bottom.

8 Q. Did you try to do it without having -- did
9 you try to make a mock-up without having the white
10 frame around the edge?

11 A. At that time -- at that time, no.

12 Q. Do you think you -- you -- new question,
13 different question.

14 The corners on the edge are square. Did
15 you give any thought to why you were choosing square
16 corners at the time you did it?

17 MR. ZELLER: Mischaracterizes the mock-up.

18 A. If you notice in the original drawing, it
19 was round corners. It was just more practical for me
20 to make it with square corners at this point. But as
21 you'll see in later mock-ups, round corners what I
22 anticipated.

23 Q. (By Ms. Taylor) You said in the drawing
24 there were round corners?

25 A. If you look at it closer on the larger

1 one, the back side?

2 A. Uh-huh.

3 Q. What's the -- there -- there's like a panel
4 with screws --

5 A. Uh-huh.

6 Q. -- and like notches.

7 A. Okay.

8 Q. Can you tell me what that is?

9 A. It is a plate. The -- this was intended so
10 that I could easily obviously change the weight, but
11 also I could change the pages that were displayed
12 inside of the device. This is a -- is a
13 nonfunctioning device. We had to have different pages
14 for the video that we were creating.

15 (Phone ringing.)

16 MS. TAYLOR: I forgot to turn it off. It's
17 now off. Sorry. I thought I had.

18 Q. (By Ms. Taylor) So you would open up the
19 back to change the pages; is that what you're saying?

20 A. Yes, exactly. Uh-huh.

21 Q. Okay. How big is -- what -- what's the
22 front of it covered with?

23 A. Is there -- what was the question?

24 Q. What's the front of it covered with, the
25 front, in front of --

1 A. Oh, it's -- again, it's Plexiglas.

2 Q. Plexiglas?

3 A. Uh-huh.

4 Q. And is the size of the Plexiglas the same
5 size as the front?

6 A. No.

7 Q. What's the size of the Plexiglas in
8 relation to the size of the front?

9 A. Slightly smaller.

10 Q. Is -- I understood that the -- never mind.
11 Is it the same size as the display -- or
12 why don't you illustrate for me, point to where the
13 Plexiglas goes.

14 A. The Plexiglas is here, and it has a slight
15 frame for holding.

16 Q. Does the Plexiglas extend under the frame
17 at all?

18 A. It does not.

19 Q. It goes only to the edge of the frame?

20 A. Yes.

21 Q. And -- and that was the same on the white
22 1981 mock-up that you did?

23 A. Yes.

24 MR. ZELLER: That's -- the question is
25 vague when you say the same.

1 Q. Did you have further interactions with
2 Toshiba?

3 A. Well, the lab was closed in end of July
4 1995, and did not have any further contact with
5 Toshiba until they came to Kent State University where
6 I was a professor in '97.

7 Q. And could you remind me when they came to
8 visit you in Boulder, Colorado?

9 A. It would have been probably late '94 or
10 early '95. I don't recall the time.

11 Q. Was there just one visit?

12 A. It was only one visit that I recall.

13 Q. Did you go to Japan to see them?

14 A. Not at that time.

15 Q. During that -- the time frame when you were
16 interacting with them in connection with the
17 development of their tablet, did you -- how many
18 discussions did you have with them?

19 A. Just the one discussion in Boulder,
20 Colorado.

21 Q. Okay. Is that Toshiba tablet operated with
22 a stylus?

23 A. It was operated with a stylus.

24 Q. Where does one store the stylus?

25 A. Let's see. I don't recall where they put

1 it. Oh, back here.

2 Q. The gray thing in the back?

3 A. Uh-huh.

4 Q. Okay. Do you know what those other --
5 there are other things at the top. I don't know if
6 those are buttons or -- there's something that's not
7 flat towards the top, that --

8 A. Right here.

9 Q. -- and above that. There's two of those
10 indentations. Do you know --

11 A. To be honest, I have no idea what they do.

12 Q. Okay. There are four things around the
13 corners. Do you know what those are?

14 A. Referring to this?

15 Q. Yes.

16 A. These are just to raise it off the surface
17 of the table.

18 Q. Do you know why it was raised off the
19 surface of the table?

20 A. I think just to provide it -- a sturdier
21 device on the table.

22 Q. Okay. There's also -- near the bottom
23 there is a -- it looks to -- where it's curved around
24 the edge.

25 A. Uh-huh.

1 Q. Yeah, actually tell me about that thing
2 you're pointing to right now.

3 A. This is the battery actually.

4 Q. The battery?

5 A. Uh-huh.

6 Q. And then you --

7 A. And this would be pushing it over to
8 release the battery.

9 Q. Oh, so the -- so the -- the thing above the
10 battery compartment, immediately above the battery --

11 A. This?

12 Q. No, the little thing that you were
13 touching.

14 A. Oh, this?

15 Q. No, I'm going to point to it.

16 A. This one?

17 Q. Yeah. So that's to unlock the battery
18 compartment?

19 A. Yes. That's just a catch to unlock the
20 battery.

21 Q. And then the battery compartment is in the
22 bottom?

23 A. That would drop out, yes.

24 Q. Can you show me how that works?

25 A. Well, I haven't done that for a long time,

1 but --

2 Q. Don't break it.

3 A. There it is.

4 Q. And is that a rechargeable battery?

5 A. Yes. Yes. Uh-huh.

6 Q. So there's a charger that you --

7 A. There was a charger with it.

8 Q. All right. Now, I would have thought the
9 thing in the -- turn -- let's go to the back again.

10 A. Uh-huh.

11 Q. I would have thought that thing in the
12 middle of the back was a battery compartment. That
13 looks like one to me. Do you know -- do you know what
14 that is?

15 A. I can't be sure what that was intended for.
16 I think it was to be able to change some of the chips
17 inside of this.

18 Q. Okay. And then on the right side there's
19 another compartment right under your hand that also
20 has -- is sealed with a screw.

21 A. Yes.

22 Q. Do you know what that is?

23 A. I have -- I have no idea what -- what that
24 was intended for.

25 Q. Okay. And then on the sides, I -- can I

1 see that side?

2 A. Uh-huh.

3 Q. Do you know what that button is below that
4 compartment that you just said you don't know what
5 it's for?

6 A. No.

7 Q. You don't know what that button is?

8 A. Uh-uh.

9 Q. Do you know what that hole is near the
10 bottom of the edge?

11 A. And -- no, I have no idea.

12 Q. No. Okay. On the other side there's two
13 kind of elongated openings.

14 A. Uh-huh.

15 Q. Do you -- do you see those near the top?

16 A. That was for PCMCIA cards.

17 Q. Are those the same kind of cards that you
18 were talking about?

19 A. Same kind of cards that I had on this
20 device.

21 Q. Okay. And then at the top there's some
22 rubbery things?

23 A. These are just for being able to plug in at
24 that point to be able to connect it to a computer.

25 Q. Okay. And then to the right of that is

1 another little opening. Do you know what that is?

2 A. That was for headphones.

3 Q. Okay. All right. Can you turn it around
4 to the front and let me see if -- do you know why --
5 oh, so -- actually, let me see. Do you mind if I take
6 out the battery?

7 A. Sure.

8 Q. I'll try carefully. Can you hold it for a
9 second?

10 A. Uh-huh.

11 Q. So when you take out the battery, there's a
12 gap in the back, right?

13 A. Yes.

14 Q. But it goes -- but in the front it extends
15 down?

16 A. Yes.

17 Q. Do you know why that is?

18 A. I have no idea.

19 Q. Okay. And do you know what the PDV is on
20 the front?

21 A. That was their -- what they called it was a
22 Portable Document Viewer.

23 Q. And you said this one was black and white;
24 is that correct?

25 A. Black and white display.

1 Q. And it -- and it used a stylus?

2 A. Had a Sun operating system.

3 Q. Oh, Sun operating system. Do you know what
4 those little dots are on the side?

5 A. Don't know.

6 Q. They're kind of raised.

7 A. They have dots on the back too. I have no
8 idea what those are intended for.

9 Q. Just kind of raised dots here and there.

10 A. Maybe they were doing it in braille.

11 Q. Doesn't look like braille, though.

12 A. No.

13 Q. Looks like -- looks like a pattern. And I
14 see it's not quite a rectangle. At the top it kind of
15 flares out a little bit with the rounding on the
16 edges.

17 A. Yes, they did some rounding.

18 Q. Do you know why they did that?

19 A. I don't.

20 Q. Okay. Let me hand back to you your
21 battery. Don't want to lose anything. And you said I
22 believe they brought this -- they -- or they gave this
23 to you when you were at Kent State?

24 A. Yes. They produced only a few of these in
25 their laboratory, and they wanted to give it to me

1 that photograph.

2 A. Uh-huh. Yes.

3 Q. So we can skip that one. Exhibit N, can
4 you tell me what Exhibit N is?

5 A. It's a photograph of the front of the
6 Toshiba tablet.

7 Q. And who took the photograph?

8 A. Mike.

9 Q. And that's Mike Sadowitz?

10 A. Mike Sadowitz, right.

11 Q. There is something in the upper right-hand
12 corner, something that's blue and gray. Can you -- do
13 you see those?

14 A. The blue button was intended for turning
15 pages forward or backwards and the gray button was for
16 turning on the device or turning it off.

17 Q. And at the bottom there's a -- the -- the
18 gray frame at the bottom, it has a line that goes
19 horizontally from side to side. Do you see that?

20 A. The line that's there?

21 Q. Yes.

22 A. Yes.

23 Q. Do you know why that's there?

24 A. Probably decorative. Behind that panel is
25 the removable battery.

1 Q. There are some -- there are three items on
2 the left side, lower left side just where the display
3 ends.

4 A. There are like three indentations?

5 Q. Yes. Do you know what those are?

6 A. Those were simply buttons to indicate, you
7 know, that it was on and whether there was some
8 activity taking place on the tablet.

9 Q. And this is a tablet you -- that actually
10 was a working prototype; is that right?

11 A. It was a working prototype.

12 Q. So you've seen it turned on?

13 A. I'm sorry?

14 Q. You've seen it turned on?

15 A. Yes, I did.

16 Q. And are -- do those buttons display
17 different colors?

18 A. I don't recall.

19 Q. And then along the edge of the photograph I
20 can faintly see the dots. Do you see those here?

21 MR. ZELLER: I'm going to object --

22 A. The dots?

23 MR. ZELLER: I'm going to object to the
24 characterization about faintly.

25 Q. (By Ms. Taylor) Can you see the dots?

1 A. I see the dots.

2 Q. Okay. So are those -- are those the -- are
3 those the dot -- I think earlier you were describing
4 it to me. Those are dots that you described earlier.
5 Are there similar dots on the back of this device?
6 And you can turn over the real one --

7 MR. ZELLER: The question is now compound.

8 Q. (By Ms. Taylor) -- just to see it.

9 MR. ZELLER: It contains a characterization
10 of earlier testimony.

11 Q. (By Ms. Taylor) Do those dots that appear
12 in Exhibit N --

13 A. Uh-huh.

14 Q. -- also -- do similar dots appear on the
15 back of the actual device?

16 A. They appear on the back of the device.

17 Q. Where -- where are they on the device?

18 A. Towards the bottom -- or I'm sorry, towards
19 the top.

20 Q. Are there -- how many -- how many groupings
21 of dots are there?

22 A. There are three rows of dots.

23 Q. And where are the three rows of dots?

24 A. Left side, right side, and top.

25 Q. And on the front of the prototype, are

1 there three rows of dots?

2 A. Two rows of dots on the left right side,
3 right side.

4 Q. Okay. You said left right side, right
5 side.

6 A. Oh, I'm sorry. Left side, right side.

7 Q. Okay. And what -- in this photograph,
8 what's the PDV at the bottom of it?

9 A. Stands for Portable Document Viewer. The
10 name that --

11 Q. Is that --

12 A. -- that Toshiba came -- came up for the
13 device.

14 Q. Is that what appears below PDV?

15 A. Yes.

16 Q. Looks like there's a little fluorescent
17 light glare in the photograph. Can you tell me what
18 Exhibit O is?

19 A. There would be the --

20 MR. ZELLER: Object to the predicate.

21 THE WITNESS: Huh?

22 MR. ZELLER: I'm objecting to the
23 predicate. Appears compound now.

24 Q. (By Ms. Taylor) I think the question is
25 can you tell me what Exhibit O is?

1 A. Exhibit --

2 MR. ZELLER: That you can answer. Go
3 ahead.

4 A. Exhibit O is the top view of the Toshiba
5 tablet.

6 Q. (By Ms. Taylor) So is the -- there's a
7 darker black spot in the middle of it in the
8 photograph. Do you see that?

9 A. Uh-huh. Yes.

10 Q. Can you tell me what that is?

11 A. It's just a cover for a connection to a
12 computer.

13 Q. And to the right of that is what?

14 A. It's the same, but it's just where it's --

15 Q. Oh, in the photograph. To the right of the
16 black in --

17 A. Oh.

18 Q. -- the photograph is what?

19 A. This was I believe for a headphones. I
20 want to be clear. This was -- was not a production
21 model. This was merely a -- a functional prototype
22 produced by Toshiba. They only produced a few of
23 these for demonstrations, and they did not intend to
24 produce these as a commercial product.

25 Q. Do you know what happened to any of the

1 other ones they produced?

2 A. I'm sure they -- they kept them in their
3 lab.

4 Q. But you -- you don't know of anyone else
5 who has one of --

6 A. I don't know of anyone else who has one.

7 Q. And do you know who took this photograph
8 that's Exhibit O?

9 A. Mike Sadowitz took the photos at the same
10 time.

11 Q. Can you tell me what Exhibit P is?

12 A. It's the back view of the Toshiba mock-up.

13 Q. So can you -- I'm going to ask you what
14 each of the items is in the photograph.

15 A. Uh-huh. Uh-huh.

16 Q. On the very bottom there's a horizontal
17 line --

18 A. Uh-huh.

19 Q. -- that goes almost from side to side. Do
20 you see that?

21 A. Yes.

22 Q. And there appears to be a catch or
23 something --

24 A. Uh-huh.

25 Q. -- in the middle of it. Can you tell me

1 what that is?

2 A. That's for removing the battery.

3 Q. And is that the actual battery itself?

4 A. Yes.

5 Q. And so that part can come out?

6 A. Yes.

7 Q. Slightly above that and to the left just
8 off center is a rectangular button that looks like it
9 could slide from side to side. Do you see that
10 button?

11 A. I'm not sure. Are you mentioning this?
12 That is the catch for unlocking the battery.

13 Q. Okay. And then just above that and to the
14 right is a little black hole in the photograph. Do
15 you see in the photograph?

16 A. Over here?

17 Q. If you look at the photograph, there's a
18 black hole.

19 A. To the -- on the right side or left side?

20 Q. This hole right in the center.

21 A. Center?

22 Q. Can you tell me what that black hole is?

23 A. Just has a -- a screw in it probably for
24 holding it together.

25 Q. So I see a -- not quite a straight row,

1 three black holes at the bottom.

2 A. Uh-huh.

3 Q. I see a black hole right in the center, and
4 then I see what looks like it could be a straight row
5 of three black holes at the top in that photograph.

6 A. They're -- they're indentations for -- for
7 screws.

8 Q. So each of those is a -- holds a screw?

9 A. Right.

10 Q. Okay. So there are seven screws?

11 A. Are the same as on the top to hold it
12 together.

13 Q. Okay. So above that, what's the lighter
14 gray thing in the photograph that's Exhibit P?

15 A. That's the holder for the stylus and the
16 stylus.

17 Q. So it -- the stylus slides out?

18 A. Uh-huh.

19 Q. Is that similar to how the stylus was to
20 work on the -- on your 1994 proto -- the stylus holder
21 was to work on your 1994 prototype?

22 A. No, 1940 -- or the 19 -- 1994 model we had
23 the stylus on the side.

24 Q. So it would snap in from the side?

25 A. Yes.

1 Q. And this -- this one, it --

2 A. Uh-huh.

3 Q. -- gets inserted into it from the side?

4 A. Yes.

5 Q. Okay. Just below the left end of the
6 stylus in the photograph that's Exhibit P, there's a
7 elongated -- it looks like an elongated slot with
8 slightly rounded corners on it.

9 A. Those are just rubber risers on all four
10 corners so that when it lies down on a table, that
11 none of the other objects that are on the back would
12 cause the tablet to wobble.

13 Q. So the -- so there's four of those, one in
14 each corner?

15 A. Yes.

16 Q. All right. And do you know if it was
17 necessary to raise it off the table a little bit for
18 any reason other than the wobbling that you mentioned?

19 A. Necessary to stabilize it.

20 Q. Do you know if the heat was an issue with
21 this product?

22 A. I do not.

23 Q. So just above the stylus is a compartment
24 that looks like it has a screw on the left side.

25 A. Uh-huh.

1 Q. Do you see that?

2 A. Uh-huh.

3 Q. Is that a screw on the left side?

4 A. Yes.

5 Q. Do you know what that compartment is?

6 A. I do not.

7 Q. Just to the left of that compartment it
8 looks like there are four small black circles in the
9 photograph. Do you see those?

10 A. You're referring to this, I assume, yes.
11 Uh-huh.

12 Q. Those.

13 A. Oh, this.

14 Q. Four small black circles.

15 A. Oh, four black holes.

16 Q. Holes. Do you see that?

17 A. I can only speculate that it's probably for
18 a speaker.

19 Q. Okay. And then -- I'm just going up slowly
20 from the bottom. On the right side, the next thing we
21 come to is a -- what looks like a vertical --

22 A. Uh-huh.

23 Q. -- compartment that looks like it also has
24 a screw with a notch. Do you see that?

25 A. Yes.

1 Q. Is that a screw?

2 A. Yes.

3 Q. Do you know what's in that compartment?

4 A. I do not.

5 Q. Does that compartment extend over to the
6 side of the Toshiba device?

7 A. It does.

8 Q. Have you ever opened that compartment?

9 A. No.

10 Q. Have you ever opened the other compartment
11 that's in the middle?

12 A. No.

13 Q. Kind of down off the -- kind of down
14 towards the bottom.

15 A. Again, this was an -- an engineering
16 prototype. It was probably for the engineers to gain
17 access to whatever chips they have that they're using
18 to operate this.

19 Q. Uh-huh. Now, kind of right in the
20 middle --

21 A. Uh-huh.

22 Q. -- top half there are two buttons that look
23 a little bit similar to what you had described
24 earlier --

25 A. Uh-huh.

1 Q. -- as a -- a catch for the battery. Do you
2 see those two?

3 A. Uh-huh. Yes, I do.

4 Q. Do you know what those are for?

5 A. I have no idea.

6 Q. Have you ever used them?

7 A. I have moved them, but nothing happens.

8 Q. Okay. And then I see -- I can see the
9 three rows of dots on the right side and the three
10 rows of dots on the left side in the photograph.

11 A. Uh-huh.

12 Q. I can't see anything above the top. Can
13 you confirm that there are dots across -- not -- not
14 the top edge, the -- the top portion --

15 A. Three rows of dots?

16 Q. -- of the back. Yeah.

17 A. Yes, those are as far as I can tell
18 decoration.

19 Q. Okay. Now, on this photograph on the left
20 side towards the top, it looks like there's something
21 that comes out from the actual side of the product a
22 little bit. There's a little silver in the
23 photograph. Do you see that?

24 A. Yes. Those are slots for memory cards.

25 Q. How many slots are there?

1 A. It has two slots, the same as I had for the
2 1994 prototype, but they have put them on the side
3 rather than on the top.

4 Q. And so is this -- this slight bit of silver
5 I see on the left side just above the middle one of
6 those?

7 A. I'm sorry. What are you pointing at?

8 Q. This one. There's a little bit here.

9 A. Yeah, that's just -- just the edge of one
10 of the memory cards.

11 Q. And then the other one is above it towards
12 the top of the device?

13 A. Yes. I think -- actually I do know what
14 these are for. I'll take my -- back what I said.
15 They are for popping out the memory cards.

16 Q. Oh, those -- those two things in the
17 middle --

18 A. Right, those two in the middle --

19 Q. -- of the top back?

20 A. -- were just for releasing the memory
21 cards.

22 Q. Ah-ha.

23 A. I had forgotten about that.

24 Q. Could you hand me a memory card? I want to
25 see what one looks like.

1 A. So --

2 Q. And this is a what kind of memory card?

3 A. These are called PCMCIA memory cards. They
4 were very common in the 1990s.

5 Q. And we've moved beyond that now?

6 A. Huh?

7 Q. Have we moved beyond that now?

8 A. We now have flash memory cards that
9 everybody uses, the thumb drives.

10 Q. So we don't need these anymore?

11 A. No.

12 Q. Is there a reason there's two of these in
13 that as far as you know? Because you also had two.

14 A. My argument at the time that I made for the
15 Toshiba representative is that I felt that we would
16 need two. One would be for personal applications or
17 storage, and the other would be possibly for the
18 operating system or for special functions.

19 Q. Okay. I don't think I asked you yet, so
20 I'm going to ask --

21 A. Uh-huh.

22 Q. -- who took the photograph that's
23 Exhibit P?

24 A. Mike Sadowitz.

25 MR. ZELLER: I wouldn't worry about that

1 Q. With the "the tablet," but otherwise it's
2 identical to this?

3 A. It's exactly the same. As you can see,
4 these are all identical.

5 Q. Can I see it?

6 A. The other one is showing more wear and
7 tear, but it's --

8 Q. That's all right. It's actually a little
9 bit different. This one has some dots, the one we
10 talked about this morning.

11 A. Yeah, that's actually the first time I've
12 noticed that myself.

13 Q. And this one has some lines across the top.

14 A. I don't know why that happened.

15 Q. Do you know the difference -- do you know
16 if there's any difference between --

17 A. Because they're all made at the same time,
18 which kind of strikes me as -- I -- I saw that, I
19 thought, well, that's different, but I -- I don't know
20 why.

21 Q. And do you know if the other -- there were
22 four others made, right?

23 A. Right. Uh-huh.

24 Q. Do you know if the other four had this
25 design, this design or potentially something else?

1 MS. TAYLOR: I'm going to -- that's where
2 I'm going.

3 Q. (By Ms. Taylor) So -- so we'll call this a
4 Plexiglas tablet?

5 A. Uh-huh.

6 Q. And you brought two of them?

7 A. Right.

8 Q. Okay. And one is vertical orientation and
9 one is horizontal orientation?

10 A. Yes, that would be correct.

11 Q. Okay. And these two Plexiglas tablets were
12 created when?

13 A. These were created probably 1999, early
14 1999 in anticipation of the research we were going to
15 do at the shopping center in Akron, Ohio.

16 Q. And who created these two Plexiglas
17 tablets?

18 A. We had the machine shop at the -- at Kent
19 State University produce them for us.

20 Q. Okay. And I think you had said that you
21 had anticipated a flat front; is that correct?

22 A. What I drew for them was essentially a -- a
23 rectangle with round corners of clear Plexiglas that
24 we could put the pages behind. And this was the --
25 the product that came back afterwards. And we --

1 okay, that -- we'll accept it as it is and not -- not
2 have any changes made.

3 So the interpretation of the -- of the
4 machinist who made this when he saw the sketches, I
5 had actually draw -- drawn a dotted line on my sketch
6 of saying where the -- where the page would probably
7 appear, and he interpreted that as cutting it out.
8 And when it was already done, I didn't go back and
9 redo them.

10 Q. Okay. So these are the -- actually, why
11 don't you -- when we take a break, I'll take a couple
12 photos of these.

13 A. Sure.

14 Q. But I can't print them out and then have
15 you confirm what they are.

16 A. Okay.

17 Q. So can you hold them up so we can see --

18 A. Sure.

19 Q. -- them on the video --

20 A. And you want the other one too?

21 Q. -- camera and then we'll do these? So if
22 you could hold up --

23 A. Oh, okay.

24 Q. -- the two --

25 A. You want them to hold up this way?

1 A. I don't know. No way to know for sure.
2 Obviously the -- with the videos being widely
3 circulated and -- and as many conferences as I spoke
4 at and the fact that one of our members of our team
5 went to work for Apple after we shut down the lab, I
6 have to believe that people at Apple knew about the
7 work I was doing.

8 In all fairness, that was at the time when
9 Sculley was the CEO and Steve Jobs didn't return
10 until, what, 1997 I believe it was.

11 Q. After Knight-Ridder closed, have you had
12 any communications with anyone at Apple?

13 A. No. We've tried, but...

14 Q. When did you try?

15 A. Well, when I went to Kent State we tried to
16 see if Apple would be interested in helping fund our
17 research and development work, but were unsuccessful.
18 We had -- Adobe funded our research.

19 Q. Did you have anyone else fund it while you
20 were at Kent State?

21 A. I'm sorry?

22 Q. Did anyone else fund your research at Kent
23 State?

24 A. Los Angeles Times.

25 Q. Anyone else?

1 one is 250.

2 THE WITNESS: Now, both of these are --

3 MR. ZELLER: Hold on. She hasn't asked you
4 a question yet.

5 MS. TAYLOR: I haven't asked a question
6 yet.

7 MR. ZELLER: Don't jump the gun.

8 THE WITNESS: Okay.

9 Q. (By Ms. Taylor) So my question is can you
10 tell me what 249 and 250 are?

11 A. Well, these are all showing tablets, tablet
12 PCs and e-readers. And unfortunately it's cut off on
13 the left side. It is not showing the older e-readers
14 that I developed independently.

15 Q. I think if you look at 249 it goes farther
16 to the left.

17 A. Yes, but --

18 Q. However, I had taken -- we had taken -- you
19 had handed me your two --

20 A. Uh-huh.

21 Q. -- before the picture was taken.

22 A. So it's not showing those two, okay.

23 Q. So if you could explain how yours fits --
24 what -- what this is, how it's organized.

25 A. Okay. The PDAs and the tablets and

1 e-readers that I've collected over the years I have
2 displayed here. This is not all of them. I have more
3 that I have at home. But the one on the far left is
4 an Apple Newton.

5 Q. Is that in Exhibit 249?

6 A. And -- yeah, it only shows up on 249.

7 Q. Okay. Let's look at 249. So the one on
8 the far left is an Apple Newton?

9 A. Right. It was an Apple Newton that was
10 produced by Sharp Corporation. So it's -- they were
11 licensed to produce Apple Newtons. Next to that --
12 immediately adjacent to it on the -- on the right was
13 the Toshiba tablet that we've already discussed.

14 Q. Is that the -- you can see a little speck
15 of blue in the upper right-hand corner of it. Is that
16 this one?

17 A. No, this -- the tall one here is the
18 Toshiba tablet.

19 Q. With the little blue in the upper
20 right-hand corner?

21 A. Yeah, with the little blue up in the corner
22 there, yes. Uh-huh.

23 Q. Okay.

24 A. Next to that is a Panasonic display that I
25 got from Kent Displays. It used a special technology

1 that was being developed by Kent Displays. They were
2 similar to E Ink. Panasonic was experimenting with
3 this. It was temporarily sold in Japan but not in the
4 United States.

5 Q. I'm going to ask if you could -- because as
6 you go down this, it will get very confusing. Can
7 you -- let me see if this pen is good. Could you mark
8 above or below just the name and an arrow so when
9 we're reading the transcript, we know which ones
10 you're talking about?

11 A. Okay.

12 MS. TAYLOR: Why don't we go off the record
13 for a moment while he writes this down.

14 VIDEOGRAPHER: One moment, please. We're
15 going off the record at approximately 4:53 p.m.

16 (WHEREIN, a recess was taken.)

17 VIDEOGRAPHER: We're back on the record at
18 approximately 4:58 p.m.

19 Q. (By Ms. Taylor) All right. So before we
20 took a break, I think you were describing --
21 describing a Panasonic product.

22 A. Uh-huh.

23 Q. Is that correct?

24 A. Correct. Yes.

25 Q. Is that the third one from the left?

1 A. That's the third one from the left with the
2 blue screen. It was using a -- a type of electronic
3 paper display technology developed by Kent Displays
4 and by the Kent Liquid Crystal Institute in Ohio.

5 Q. And it looks to me like it's something that
6 folds in half. Is it?

7 A. It's a folding one, two-page -- two facing
8 pages.

9 Q. Was that a working product?

10 A. It was a working product. It was being
11 sold in Japan, but only for a brief period of time.

12 Q. And what would it display on it when it was
13 turned on?

14 A. Japanese comic books.

15 Q. Manga?

16 A. Mostly, uh-huh.

17 Q. Color or black and white?

18 A. Neither. It was -- it was more like a blue
19 and gray.

20 Q. And how did you come to own that particular
21 Panasonic product?

22 A. Because I had a close relationship with
23 Kent Displays while I was at Kent State University and
24 was following their work very closely, and so they
25 alerted me that this was available. And then I

1 personally bought this copy from them because it was
2 not being sold in the United States.

3 Q. You bought it from Kent Displays?

4 A. Kent Displays, uh-huh.

5 Q. Do you know if Kent Displays was involved
6 in the development of displays for any other tablet
7 products?

8 A. Their work was very simpler -- similar to
9 E Ink and electronic paper display technology that was
10 bistable, I mean, that had memory, so it was not a
11 liquid crystal-based technology.

12 (Court reporter interruption.)

13 Q. (By Ms. Taylor) Did you say bistable?

14 A. I'm sorry. Too fast. Okay. It's -- the
15 display technology that was developed for these
16 readers that Kent Displays was developing was more
17 like E Ink electronic paper technology.

18 Q. Did you use the word bistable to describe
19 it?

20 A. Bistable is a term that means that it has
21 memory, and like with E Ink when an image is displayed
22 on the screen, it doesn't require any power to
23 maintain the image.

24 Q. I see.

25 A. That's why the E Ink technology works very

1 effectively for the Kindle and other e-readers, that
2 it has a long battery life and it's reflective. So it
3 can be read in -- in the same kinds of lighting
4 conditions that you can read a book or other
5 publications. So it's not backlit.

6 Q. So what is the fourth product from the
7 left?

8 A. I'm sorry, the --

9 Q. The fourth product --

10 A. The fourth product from the left.

11 Q. -- from the left?

12 A. Is the SoftBook e-book reader that came out
13 in 1998. That and the Rocket eBook were the first two
14 true e-readers that were designed for books. And we
15 had contact -- or I had contact with them while I was
16 at Kent State University, and in fact used the
17 e-reader in one of my classes having students use it
18 and had my book converted into a form that was
19 readable on the SoftBook e-reader. It used a liquid
20 crystal display technology, but again, was black and
21 white.

22 Q. Who is the manufacturer of the SoftBook
23 e-reader?

24 A. The companies -- it was -- SoftBook was the
25 name of the company. The SoftBook Reader I think was

1 the broad name. They were sold to GemStar. GemStar
2 then licensed the technology to RCA, who produced
3 versions of it. And the same with the Rocket eBook.
4 They bought both -- both of the -- they bought all of
5 the patents to the -- the e-book technology.

6 Q. GemStar bought them?

7 A. What?

8 Q. GemStar bought them?

9 A. GemStar did before they went bankrupt.

10 Q. Do you have a Rocket eBook on your wall?

11 A. Yes. The one that's adjacent to the
12 SoftBook, immediately to the right of that, the
13 smaller device was a Rocket eBook. That version was
14 the version after R -- RCA had purchased it, purchased
15 the license to the software from GemStar.

16 Q. On the SoftBook product, was it a black and
17 white display or a color display?

18 A. The first SoftBook was black and white.
19 The SoftBook that RCA produced, the SoftBook version,
20 which is on the opposite -- on the right side of the
21 Rocket eBook was -- was in color.

22 Q. Okay. So the one on the left side of the
23 Rocket eBook --

24 A. Uh-huh.

25 Q. -- was produced by SoftBook?

1 A. That was produced by SoftBook in 1998.

2 Q. And that was black and white?

3 A. That was black and white.

4 Q. And then after GemStar acquired whatever
5 rights it acquired --

6 A. Uh-huh.

7 Q. -- and RCA produced a SoftBook --

8 A. Uh-huh.

9 Q. -- it was color?

10 A. They put out a color version.

11 Q. And that's the one --

12 A. Full color.

13 Q. And that's the one to the right of the
14 Rocket eBook?

15 A. That's right.

16 Q. Okay. And -- and could you see anything on
17 these other than books?

18 A. It was only books.

19 Q. Okay.

20 A. They -- they didn't have any other
21 applications.

22 Q. Okay. How did you acquire the first
23 SoftBook e-book?

24 A. The first SoftBooks I bought directly from
25 the SoftBook company, and we bought a number of them.

1 I think bought probably fourteen of them at Kent State
2 University.

3 Q. Those were the ones your students used?

4 A. That I used -- yeah, that I gave to
5 students to use.

6 Q. And the Rocket eBook, how did you acquire
7 that?

8 A. Similarly, I bought it directly from Rocket
9 eBook Company.

10 Q. Were those used by students as well?

11 A. That one was not.

12 Q. So did you just buy one?

13 A. We bought a couple copies of that that we
14 had in our office. I had a laboratory in Boulder,
15 Colorado called the -- The Institute for Cyber
16 Information.

17 Q. Institute for Cyber Information?

18 A. Uh-huh.

19 Q. When was that?

20 A. And that started about 1997 or '8. I'm not
21 quite sure of the date on that again.

22 Q. Do you -- do you still have that office?

23 A. That institute ran until I left in 2004,
24 and then it was converted into another institute after
25 that. It was at Kent State University.

1 Q. The Institute for Cyber Information was at
2 Kent State University?

3 A. Kent State University, uh-huh. It was part
4 of the journalism school at the time.

5 Q. But was it located in Boulder, Colorado?

6 A. No. That was -- that was located in Kent,
7 Ohio.

8 Q. I think you said it was in Boulder.

9 A. Oh, I may be getting too tired here.

10 Q. And let me know when you need a break.

11 A. I'll correct that.

12 Q. Okay. So The Institute for Cyber
13 Information was in Kent, Ohio?

14 A. That's correct.

15 Q. Okay.

16 A. And the work that you see from the
17 Panasonic tablet on and even the Toshiba tablet all
18 came into my possession after I went to Kent State
19 University as a professor and stayed there through
20 19 -- or 2004.

21 Q. Okay. What did The Institute for Cyber
22 Information do?

23 A. We were considering -- we were continuing
24 to work on the tablet concept, but working with
25 newspapers to develop anticipating the tablet. Again,

1 the -- there was no tablet at that point that was
2 suitable for what we wanted to do until 2001, 2002.

3 Q. So why did The Institute for Cyber
4 Information acquire the Rocket eBook?

5 A. Because it was capable of displaying text.
6 You know, my testing of that with students was to get
7 reactions from the students about using a portable
8 device for reading as opposed to reading a textbook
9 and -- and then applying that knowledge to how we
10 would adapt -- adapt for a newspaper.

11 Q. So were you using the Rocket eBooks in --
12 in your research?

13 A. The Rocket eBook we -- we acquired because
14 we were interested in what else was happening in the
15 industry and we had that as available to the -- but we
16 felt it was too small to be effective for newspapers.

17 Q. Were you using the SoftBook in your
18 research?

19 A. Yes. We used the SoftBook. The fourteen
20 copies of the SoftBook we used for the students, we
21 used for focus groups, and we were -- because I had
22 the ability to develop content for the Rocket eBook,
23 we were exploring the possibility of newspapers being
24 able to use the Rocket eBook.

25 Q. Did you ever develop content for the Rocket

1 eBook?

2 A. For the Rocket eBook, no. Only for the
3 SoftBook.

4 Q. The end of your last sentence -- your last
5 answer you said Rocket eBook. So I think we've
6 confused them.

7 A. Okay. The Rocket eBook is a small one.

8 Q. Uh-huh.

9 A. The SoftBook is the larger one.

10 Q. And when you were doing research, which one
11 was that?

12 A. When or which one?

13 Q. Which one were you using?

14 A. The Soft -- the SoftBook.

15 Q. Okay. And then when you were exploring the
16 possibility of newspapers being available on it, which
17 one was that?

18 A. Uh-huh. The SoftBook.

19 Q. You said Rocket eBook.

20 A. Okay.

21 Q. That's okay. We're clear now. And then
22 you said there's a second SoftBook here, the sixth
23 item from the left?

24 A. Yes.

25 Q. Why did you acquire that one?

1 A. I acquired that later -- I only acquired
2 one of them personally because it was in full color
3 and I wanted to see how the color was on that device.

4 Q. And when did you acquire that?

5 A. Probably around 2002.

6 Q. Did you end up using that one in your
7 research?

8 A. No.

9 Q. When did you acquire the Rocket eBook?

10 A. Probably 1998 -- well, this one, no. The
11 first Rocket eBook that I acquired was the original
12 Rocket eBook, and that would have been 1998. The one
13 that's on my shelf is the RCA version that came out
14 about 2001, 2002.

15 Q. So you've had two Rocket eBooks?

16 A. Yes.

17 Q. What happened to the older one?

18 A. They stayed in Kent, Ohio.

19 Q. Okay.

20 A. All of the ones here are ones that I
21 purchased personally, so I was not taking any property
22 from the university.

23 Q. I understand. So the first SoftBook that's
24 here, the fourth product from the left --

25 A. Uh-huh.

1 Q. -- when did you acquire the fourteen copies
2 of that?

3 A. That would have been 1998.

4 Q. Okay. I think we're done with the first
5 six. The seventh product that's kind of in the middle
6 of the picture and it's a little larger than the
7 others --

8 A. Uh-huh. It has a silver --

9 Q. It has silver, yes.

10 A. That's --

11 Q. Can you tell me what that one is?

12 A. That's an NEC tablet PC that came out soon
13 after Bill Gates had made his announcement that he was
14 going to introduce tablets. And I did have contact
15 with Microsoft for a period of time there. I went to
16 the first tablet PC conference in New York and I
17 presented a concept at that time.

18 I had already developed by that time a
19 digital version of the Los Angeles Times national
20 edition that used PDF and used Acrobat from Adobe that
21 allowed for hyperlinks and layered content and
22 interactive multimedia within the document, and was
23 able to display it on the tablet PC.

24 I also began to develop a product that I
25 called Newsbooks, essentially an e-book for news

1 products and -- and particularly looking at newspapers
2 that were doing special series, and I would turn that
3 into an e-book in PDF that was readable on the
4 tablets.

5 And so the tablet PC -- the NEC tablet PC
6 was the first slate tablet PC that was lightweight.
7 It weighed about two pounds and was at that time the
8 closest thing on the market to my original vision for
9 a tablet.

10 But I argued at the time that it was still
11 a PC and not the kind of tablet that I expected it to
12 be because it still had to be booted up, it still had
13 Windows software. So the NEC tablet became my main
14 tablet for demonstrating the vision I had of -- of
15 newspapers on tablet display.

16 Q. So did you use the NEC tablet for the
17 digital -- to display the digital version of the LA
18 Times that you developed?

19 A. Yes.

20 Q. And did you use the L -- the NEC tablet at
21 some of the conferences you went to?

22 A. I did.

23 Q. Did you use it in place of some of the
24 prototypes you've shown us today or in addition to the
25 prototypes or potentially both?

1 A. Usually in addition to.

2 Q. Okay. When did you acquire the NEC tablet?

3 A. I'm guessing about 2003.

4 Q. How did you acquire the NEC tablet?

5 A. Purchased them directly from -- through the
6 Internet.

7 Q. You said them. Was there more than one?

8 A. I'm sorry?

9 Q. You said them. Was there more than one?

10 A. Yes, we did. We purchased I think probably
11 about ten at that point. When I came to Columbia
12 University in 2004, by that time they were putting it
13 on the used market because NEC stopped producing it at
14 that point and so we purchased another batch. I don't
15 remember how many for sure. I think probably another
16 ten at the University of Missouri to use for our focus
17 groups.

18 Q. So were the first ten purchased when you
19 were still at Kent State?

20 A. Yes.

21 Q. Did you use them in your focus groups?

22 A. We did have focus groups at -- at Kent
23 State.

24 Q. Did you use the NEC tablet in focus groups?

25 A. Yes.

1 Q. Did you use them in any other way in -- in
2 research?

3 A. Focus groups and using it for testing the
4 concepts that I was pursuing for how a newspaper and
5 how advertising would be presented on a device with
6 that size of display in full color.

7 Q. How did you test those concepts other than
8 in focus groups?

9 A. I'm sorry?

10 Q. How did you test those concepts other than
11 in focus groups?

12 A. It was more personally testing some things
13 to make sure that they worked properly because Acrobat
14 was very robust and capable of handling embedded
15 multimedia and layered content.

16 This was actually used in 2004 here when we
17 launched what was called the eMprint, electronic media
18 print project. I conducted a field test in the spring
19 of 2004 where we made it available for downloading to
20 a PC, but anyone who had a tablet PC obviously
21 benefited more because they could rotate it to a
22 portrait orientation.

23 In the fall of 2004 we then had several
24 other graduate students working with me to actually
25 produce The Columbia Missourian, which is a community

1 newspaper that's affiliated with the university to do
2 it on a regular basis, and we put it out for about a
3 year and a half.

4 It was funded by the Reynolds Journalism
5 Institute as a research product. We had about five
6 thousand people worldwide registered to participate in
7 the eMprint project. Again, it's eMprint, all one
8 word with a capital M, lowercase -- lowercase E,
9 capital M, lowercase P-R-I-N-T.

10 The -- so that was the first full-scale
11 live test of a newspaper being delivered to a tablet
12 device.

13 Q. And that was in nine -- in 2004, did you
14 say?

15 A. It began in -- well, the first test was in
16 2004, in the fall of 2004. I may have actually --
17 well, let me back up here a second.

18 I came here in August of 2004 as the first
19 Reynolds Journalism fellow. My first project with
20 that fellowship was to develop the prototypes for a --
21 a newspaper -- or a digital version of The Missourian
22 that could be displayed on a tablet.

23 I had already done the LA Times, so this
24 was taking The Missourian. We did some preliminary
25 experiments in 2004. In 2005, from March of 2005

1 until May of -- a ten-week period we did a field test
2 in 2005 of The Missourian in the eMprint format. It
3 was a weekly product.

4 In the fall of 2005 we then launched it on
5 a regular basis. We were doing it two times a week.
6 We had graduate students doing it. I helped them to
7 get it started and then we had the template set up to
8 produce it.

9 Part of the test was to show that the
10 production process could be fine-tune enough so that
11 they could actually do the work on deadline, in which
12 they were able to do.

13 That project ran through 2006 and was
14 terminated in May of 2007. Keeping in mind The
15 Columbia Missourian is a small community newspaper,
16 their print circulation was about seven thousand. We
17 had about five thousand people who were downloading
18 copies of the digital edition, but it turned out that
19 we only had about six hundred or so who were regular
20 downloaders of the digital edition.

21 And at that -- up until -- well, backing up
22 a second. During the field test we actually sold
23 advertising into the product and were making money
24 doing it, so we made a profit, which was encouraging.

25 Later in 2004 as the students took over and

1 there was less marketing money, the -- the registered
2 users started to decline some, and by 2007 the
3 decision was to switch our attention more to the -- to
4 the website to rebuild the website for The Missourian
5 and not to try to do a digital edition until an
6 appropriate tablet was on the market, which at this
7 point in time The Missourian now is looking at doing
8 an app for the iPad based on the work that I did with
9 the eMprint project.

10 Q. So --

11 A. I should point out all the other devices to
12 the right of the NEC tablet PC are e-readers using the
13 E Ink electronic paper technology. So beginning with
14 the Sony e-reader, which was the first, the iRex,
15 which was a spin-off of Royal Philips Electronics, and
16 then the Kindle, which really launched everything in
17 2007 with the -- with their product, and then Kindle
18 continued to -- to repeat some, but finally went out
19 of business, and then we have the Kindle --

20 Q. Wait.

21 A. -- and after Kindle --

22 Q. Kindle continued to --

23 A. The Amazon Kindle.

24 Q. -- compete some and then went out of
25 business?

1 A. IRex went out of business.

2 Q. IRex continued to compete some --

3 A. Compete -- tried to compete with Kindle --

4 Q. -- and then went out of business, yeah.

5 A. -- but they couldn't and they finally went
6 out of business.

7 Q. It's late in the day. You reversed the
8 names.

9 A. I know. It's -- it's getting -- it's
10 getting confusing.

11 Q. What's --

12 A. Yeah.

13 Q. What's the larger one next to that first
14 Kindle?

15 A. That large one is an iRex sort of
16 tablet-sized device, but it's still using electronic
17 paper technology. It's still black and white.

18 Q. It's -- is it the one that kind of -- I
19 think it has a little bit of a -- I don't know, a
20 swoosh or --

21 A. It has a curved edge on it. That's the
22 buttons for page turning.

23 Q. A different color?

24 A. Uh-huh. But it was black and white too.

25 Q. Okay. And what's the one after that?

1 A. The one right next to it in front of it --

2 Q. Yes.

3 A. -- was the last of the iRex e-readers
4 before they went bankrupt. And it was black and white
5 also using E Ink technology.

6 Q. How do you spell iRex?

7 A. Just lowercase I, capital R, lowercase E-X.

8 Q. And where was iRex located?

9 A. They were based in -- in the Netherlands.

10 Q. And that was a black and white e-reader?

11 A. Yes, they're all black and white e-readers.

12 Q. And next there's one that's a little bit
13 behind that one.

14 A. Yeah, behind that is the larger Kindle.
15 That's the Kindle DX. That was a 9.7-inch display in
16 black and white. It's still being marketed now. And
17 then just below that is the second generation Kindle
18 that came out. The -- next to that is a Sony e-reader
19 that came out in 2009 with a touchscreen.

20 Q. And that's the one that's cut off at the
21 edge of Exhibit 249?

22 A. Or -- yeah, it's cut off on the edge here.
23 On the other one it's over here, yeah. Uh-huh.

24 Q. Okay. And -- and what is that one?

25 A. On two -- on Exhibit 250 is the Sony

1 e-reader from I think 2009. And then next to that is
2 the Barnes & Noble NOOK e-reader. It's first
3 generation black and white display for reading, but a
4 little color three-inch touchscreen at the bottom.

5 Q. Did you say the Sony was a touchscreen?

6 A. The one in 2009 had a touchscreen on it.

7 Q. And what does -- what do you mean by that?

8 A. That it actually responded -- I think
9 actually it was a stylus -- I think it's a
10 stylus-based screen.

11 Q. And you could push something on the screen
12 and something would happen?

13 A. Right. Right. All the other ones were all
14 by buttons on the side or five-way controllers.

15 Q. And did you mention that there's a
16 touchscreen aspect to that NOOK?

17 A. The NOOK at the very bottom had a color
18 display that was a touchscreen.

19 Q. And what would that touchscreen do?

20 A. It basically would take you to the next
21 publication that you had stored on it or it would
22 control the settings that you had on your -- on your
23 NOOK.

24 Q. And that portion of the display was in
25 color?

1 A. It was -- that was the only portion that
2 was in full color. It was a very strange one to work
3 with because once you started using the bottom half
4 you kept wanting to touch the top half, and of course
5 it didn't work. That was all buttons.

6 Q. So at the top you couldn't touch and have
7 it do anything?

8 A. No. That was -- that was the black and
9 white E Ink display, whereas the bottom one was a full
10 color liquid crystal display.

11 Q. I think I've read that the NOOK now -- is
12 there a full color one?

13 A. There's a full -- there's a full color NOOK
14 out that's actually an Android-based small tablet,
15 essentially a seven-inch display. And then they have
16 a smaller black and white display that is a
17 touchscreen.

18 Q. Now, you said that the full color NOOK is
19 essentially a tablet?

20 A. It is. It's not on here on display. I'm
21 using it actually. It was on my desk at the time.
22 But it's a -- it's an Android tablet essentially.

23 Q. So what's the difference between what
24 you've described as an e-reader here and that one that
25 you're calling a tablet?

1 A. The e-readers were really all dependent on
2 electronic paper technology largely because of the
3 battery life and because they were grayscale rather
4 than color. The -- the distinction between an
5 e-reader and a tablet is rapidly becoming blurred.

6 Q. Let's go back to the NEC one in the middle
7 of the page.

8 A. Uh-huh. Uh-huh.

9 Q. When I asked you about that, you used the
10 phrase slate tablet PC.

11 A. It's tablet PC.

12 Q. I think you said slate.

13 A. It's a slate. A slate is just that it
14 didn't have a keyboard attached to it. There were
15 convertible models that had a keyboard and it was a
16 clamshell like a laptop, but you could rotate the
17 monitor, turn it back around and use the pen-based
18 approach for it. This one I could hook up a keyboard
19 through a USB connection.

20 Q. So when you said slate, you mean there's no
21 keyboard that's --

22 A. Yes.

23 Q. -- comes with this?

24 A. Any -- yeah, any time you refer to them as
25 a slate, it means there's -- there's no keyboard

1 actually attached to it.

2 Q. Okay. I'm looking at a lot of tablets here
3 and --

4 A. Uh-huh.

5 Q. -- and e-readers. I don't see keyboards on
6 these.

7 A. You could say that all of these are slates.

8 Q. Okay. I was just wondering what you meant
9 by that.

10 A. Uh-huh.

11 Q. The -- the NEC one here, it looks like it's
12 got a variety of buttons and things around the edges.

13 A. It does for page turning and for, you know,
14 typical PC-type operations for things for resetting
15 and -- and I've forgotten what all the buttons are for
16 there now. But the -- on the right side, that was the
17 page-turning buttons.

18 Q. Was this also touchscreen technology?

19 A. It was stylus-based touchscreen.

20 Q. When you -- so stylus-based --

21 A. It did require a stylus.

22 Q. So if you --

23 A. You could not use your finger to -- to --
24 to activate it.

25 Q. So if you touched it with a stylus,

1 something would happen?

2 A. Right.

3 Q. Okay. Are any of these others touch-based?

4 A. None of these were touchscreens. All of
5 them involved styluses.

6 Q. With a stylus, were any of these others
7 touchscreens? With a stylus?

8 A. Everything to the right of the -- including
9 the SoftBook were styluses. The Panasonic e-reader
10 was a touchscreen.

11 If you notice in the image where you have
12 fingerprints on the screen, it was a demonstration of
13 the problem that you have with touchscreens where
14 there's no solid surface because with -- with any of
15 the E Ink technology or electronic paper technologies
16 because it's not refreshed constantly, if your finger
17 puts pressure on it, it's going to leave a blob on the
18 screen, and that's what it's showing there.

19 And the only way you could rid of the blobs
20 on the screen, which really are finger on it, was to
21 then have to call it back up again and refresh the
22 screen --

23 Q. Is this one --

24 A. -- manually.

25 Q. Is this one turned on?

1 A. It was functional. I haven't used it in a
2 long time, but it was functional. It just needs to be
3 recharged.

4 Q. Okay. So the Panasonic was a touchscreen
5 technology?

6 A. Yes, it was a touchscreen technology. That
7 was the only one that was actually enabled by finger
8 touching.

9 Q. Okay. And the two SoftBooks?

10 A. Those were all styluses.

11 Q. They were touchscreen, but with a stylus?

12 A. Right.

13 Q. Is there a different terminology you use
14 when it's a stylus that touches the screen as opposed
15 to a finger that touches the screen?

16 A. Well, there's -- there's different
17 technologies involved. I mean, the resistive and
18 capacitive display or screens. It's only really been
19 in the last few years that it's been possible to do a
20 touchscreen with a finger that has very much precision
21 to it.

22 Q. Because I think as we got towards the right
23 on some of these --

24 A. Uh-huh.

25 Q. -- you had said there was no touchscreen --

1 A. Uh-huh.

2 Q. -- capability at all.

3 A. Uh-huh.

4 Q. I'm trying to figure out which -- which
5 ones had touchscreen capability whether it was stylus
6 or fingers?

7 A. Well, all of them -- all of them involve a
8 stylus.

9 Q. So --

10 A. Except for the one on the Panasonic one.

11 Q. Okay. So the -- are the Kindles down at
12 the right touchscreen?

13 A. You've caught me. Correct. The Kindles
14 have not been at this point in time stylus or a touch
15 capable. Those are all using buttons.

16 Q. What about the three iRex products?

17 A. They were styluses.

18 Q. So you could touch the screen with a
19 stylus?

20 A. That's right.

21 Q. And I forgot the name on the product to the
22 left of the Nook. Was that a Sony?

23 A. With the Nook?

24 Q. To the left of the Nook.

25 A. Oh, to the left of the Nook with the Sony

1 e-reader, that was -- that involved a stylus.

2 Q. So that was a touchscreen with a stylus?

3 A. Touchscreen with a stylus, uh-huh.

4 Q. And then between the NEC and the first

5 iRex, there's a smaller product there?

6 A. Oh, the one that's in the middle. You're
7 talking about the gray one here? I'm pointing.

8 Q. No, between the NEC and the first iRex?

9 A. Oh, that's the -- that's the first Sony
10 e-reader that was sold in the United States.

11 Q. And that one touchscreen?

12 A. I don't believe it was, no. I think that
13 one was all buttons.

14 Q. Okay. And are these -- I -- I think when I
15 handed you the photograph you noted that there were
16 things on the left that were missing from how it's
17 normally displayed in your office?

18 A. Uh-huh.

19 Q. Can you tell me what would be to the left
20 at the end of the row in Exhibit 249?

21 A. Well, immediately next to the Sharp Newton,
22 the small one on the left side would have been the
23 1994 tablet, and immediately to the left of that --
24 I'm sorry, Toshiba is there. Immediately to the left
25 of that would have been the 1980s white tablet.

1 Q. The white tablet?

2 A. Uh-huh.

3 Q. And are these in chronological order?

4 A. They're sort of chronological order.

5 Q. Is there --

6 A. Mostly chronological order.

7 Q. Is there anything that jumps out at you as
8 not being in chronological order?

9 A. The Panasonic e-reader, as I say, was
10 developed in Japan and sold in Japan. I purchased
11 that somewhere towards the end of -- well, the 1990s,
12 but I'm not sure now when exactly I purchased it so I
13 didn't put a date on it.

14 Q. So I'm -- since you marked on that one,
15 which I asked you to, I'm going to go ahead and have
16 two clean ones marked as Exhibits 251 and 252 so that
17 we just have clean photos.

18 A. Uh-huh.

19 Q. And I don't have extra copies for you, but
20 -- 251, you can cover up my scribble.

21 (WHEREIN, Exhibit 251, Photograph, and
22 Exhibit 252, Photograph, was marked for identification
23 by the Court Reporter.)

24 THE WITNESS: I'm glad this is not a
25 criminal trial.

1 VIDEOGRAPHER: We're back on the record on
2 tape four at approximately 5:55 p.m.

3 Q. (By Ms. Taylor) So what I'm going to do
4 next, Mr. Fidler, is hand you some photographs of some
5 of the prototypes that you have. These are the
6 photographs I took last night.

7 A. Uh-huh.

8 Q. The first one is Exhibit 254.

9 A. Uh-huh.

10 (WHEREIN, Exhibit 254, Photograph, was
11 marked for identification by the Court Reporter.)

12 THE WITNESS: Fingers holding up okay?

13 Q. (By Ms. Taylor) Could you take a look at
14 Exhibit 254?

15 A. Uh-huh.

16 Q. Can you tell me which prototypes you see in
17 254?

18 A. Well, on the left is the first prototype
19 from the 1980s sitting -- it's the white one. Sitting
20 on top of that is the back of the 19 -- or 1994
21 prototype. Looks like the -- the top and back.

22 Q. I see two notches on the left side of the
23 1994 prototype?

24 A. Uh-huh.

25 Q. Do you see those?

1 A. That was spaces for memory cards.

2 Q. So are those notches at the top of the
3 prototype?

4 A. Yes, right.

5 Q. And then on the right side of the 1994
6 prototype I see a longer slender notch. Do you see
7 that?

8 A. I'm sorry?

9 Q. On the right side of the 1994 prototype.

10 A. On the side, yes. The -- as we described
11 before, that's the holder for the stylus.

12 Q. Okay. I'm going to give you the next one.

13 A. Uh-huh.

14 Q. 255.

15 (WHEREIN, Exhibit 255, Photograph, was
16 marked for identification by the Court Reporter.)

17 Q. (By Ms. Taylor) Again, could you take a
18 look at 255 and tell me which prototypes you see in
19 it?

20 A. Well, both prototypes are here. The 1980s
21 prototype on the bottom, it looks like the back of it,
22 and then the 1994 prototype is sitting on top of it.

23 Q. And from what -- are we looking at the 1994
24 prototype from a side or a top or the bottom?

25 A. We're looking at the bottom of the 1994

1 prototype and I suspect we're looking at the bottom of
2 the 1980s white tablet.

3 Q. It looks to me like there's a long notch
4 across the 1994 prototype?

5 A. Uh-huh.

6 Q. Is that in the bottom of the prototype?

7 A. That's on the side. It would be on the
8 right side of the -- of the tablet prototype for 1994.
9 That was the holder for a stylus which is missing at
10 this point.

11 Q. Do you have that stylus with the second
12 prototype you brought today?

13 A. No. I've managed to lose all the styluses.
14 I've given them out to too many people.

15 Q. Lost them all?

16 A. And they all lose them.

17 Q. And then this is the back of the 1994
18 prototype that's on the top?

19 A. Yes, it is.

20 Q. Okay. Next is Exhibit 256.

21 (WHEREIN, Exhibit 256, Photograph, was
22 marked for identification by the Court Reporter.)

23 Q. (By Ms. Taylor) Can you tell me what
24 prototype we see in Exhibit 256?

25 A. Again, this is the back of the 1994

1 prototype with two of the memory cards sticking out at
2 the very bottom that we see here. It's actually the
3 top. Where the memory cards are is actually the top
4 of the -- of the tablet device.

5 Q. All right.

6 A. Back side.

7 Q. I'm going to hand to you Number 257.

8 (WHEREIN, Exhibit 257, Photograph, was
9 marked for identification by the Court Reporter.)

10 Q. (By Ms. Taylor) Can you tell me what
11 prototype we see in Exhibit 257?

12 A. Again, this is the 1994 prototype with --
13 this is the top and we're looking at the back of it
14 with the -- two of the memory cards in place. We
15 intentionally had them sticking out a little harder or
16 a little higher than the top of the tablet because we
17 had to make them easy to pull out. We didn't have any
18 automated mechanisms to pop them out.

19 Q. All right. I'm going to hand you Number
20 258.

21 (WHEREIN, Exhibit 258, Photograph, was
22 marked for identification by the Court Reporter.)

23 Q. (By Ms. Taylor) Can you tell me what ex --
24 what prototype you see in Exhibit 258?

25 A. In this -- in that prototype -- oh.

1 Playing some tricks here. This is -- this is the --
2 again, the back of the 1994 tablet on the bottom with
3 the 1980s tablet corner sitting on top of that tablet.
4 And what we're seeing is the -- the top right corner
5 of the 1980s tablet on top of the back of a -- of the
6 1994 tablet.

7 Q. And that -- the memory cards are to the
8 right of the 1994 tablet, is that correct, in the
9 photograph?

10 A. They're on the -- this is the back of the
11 1994 tablet, and the memory cards would be on the left
12 side of the tablet if you're facing the front.

13 Q. And -- and we're looking --

14 A. It's on the right side in this image,
15 uh-huh.

16 Q. Okay. And -- and I think earlier you
17 testified that this -- it's kind of funny. It almost
18 looks like an exhibit sticker to me. This corner
19 within --

20 A. Uh-huh.

21 Q. -- the display of the 1980s tablet --

22 A. Right. Uh-huh.

23 Q. -- was -- contained certain information?

24 A. Right. I'm just providing the dates and
25 the time and number of pages that were stored in the

1 device. Again, this is all simulated. Nothing was
2 actually functioning.

3 And then the number of pages saved because
4 the assumption was that each additional newspaper
5 would have a certain number of pages, but you could
6 also save pages in your own personal storage area.

7 Q. I'm going to hand to you 259.

8 (WHEREIN, Exhibit 259, Photograph, was
9 marked for identification by the Court Reporter.)

10 Q. (By Ms. Taylor) Can you tell me what's in
11 Exhibit 259?

12 A. And again, this is the 1980s tablet sitting
13 on top of the 1994 tablet. The information that you
14 see at the bottom of the screen on the 1980s tablet
15 is -- was recently added to that display so that when
16 people came to my office they would know what they
17 were seeing and so that -- this page was actually
18 printed out later -- in fact, more recently so that I
19 could put it in my office and be able to explain to
20 people what that was.

21 So the image that you see on the 1980s
22 tablet here was the image that I created for the
23 drawing that I did in the 1981 article for Associated
24 Press Managing Editors Association. We would use this
25 tablet -- I used this tablet a number of times to

1 display other pages at different times.

2 Q. What's the language that was added to the
3 bottom?

4 A. Well, I just explained this is a mock-up of
5 an e-reader and introduced --

6 Q. You have to read that much more slowly for
7 Bill.

8 A. Oh. It says below it this is a mock-up of
9 an e-reader and digital newspaper front page created
10 by Roger Fidler in 1981 to illustrate an essay he
11 wrote for an APME special report titled The Changing
12 Newspaper Year 2000.

13 In that essay, Fidler predicted that
14 on-line services would become mature businesses and
15 that people would read newspapers on portable
16 magazine-sized devices in the first decade of the 21st
17 century.

18 Q. And when did you add that language to the
19 display that's in the that prototype?

20 A. Probably at the beginning of this year.

21 Q. And why did you do it at that point in
22 time?

23 A. Because I had been using a number of
24 different pages. I -- I used the Knight-Ridder
25 current pages sometimes in this location. In fact,

1 when I went to the MacNeil/Lehrer NewsHour in 1991 the
2 page that was actually displayed on the front of this
3 was the Knight-Ridder current page that I created
4 while I was a fellow at Columbia University.

5 And that was what -- and the pages from
6 that database-driven model that I had created was what
7 I was using in this display. So between 1981 and 1991
8 I would use this device to experiment with different
9 ideas for what pages might look like within a display.

10 Q. And why did you add the language at the
11 bottom at the beginning of this year?

12 A. Because this is kept in my office, and so
13 that when I have visitors I can point this out to them
14 that this -- that's what this was. So --

15 Q. And was there -- go ahead.

16 A. What?

17 Q. I didn't mean to cut you off.

18 A. No, that's all right. This just made it
19 easier to explain what it was that they're holding.

20 Q. And was there a particular impetus to do it
21 in early this year?

22 A. No. It was just an idea at the moment I
23 thought to go ahead and do that to actually show the
24 page that I created in 1981 within this prototype
25 because the -- the prototype or the mock-up,

1 three-dimensional mock-up that I created was created
2 following my creation of the page and the image with
3 the round-cornered rectangle that I had displayed in
4 the APME article.

5 Q. Okay. So going back to Exhibit 259, which
6 is the photograph.

7 A. Uh-huh.

8 Q. The one right in front of you?

9 A. Right.

10 Q. Is that the lower right-hand corner of the
11 prototype?

12 A. This is the lower right-hand corner of the
13 1980s tablet, and it's sitting on top of the top back
14 of the 1994 tablet.

15 Q. So next we have Exhibit 260.

16 (WHEREIN, Exhibit 260, Photograph, was
17 marked for identification by the Court Reporter.)

18 Q. (By Ms. Taylor) Can you tell me what's in
19 Exhibit 260?

20 A. This is a -- the bottom top view of the
21 Toshiba prototype tablet. They call it a PDV.

22 Q. I find the word -- wording bottom top view
23 confusing.

24 A. The bottom front.

25 Q. Bottom front?

1 A. Yeah, we're seeing -- yeah, the front
2 bottom view. I'll clarify that.

3 Q. Got it. All right. Here's Exhibit 261.

4 (WHEREIN, Exhibit 261, Photograph, was
5 marked for identification by the Court Reporter.)

6 Q. (By Ms. Taylor) Can you tell me what
7 Exhibit 261 is?

8 A. Okay. This is again the Toshiba prototype
9 tablet. They call it a Portable Document Viewer.
10 What we're looking at is the front view of the -- the
11 tablet and the bottom portion looking at what would be
12 the left side of the device.

13 Q. There's some things -- there are some items
14 on the prototype that we're looking at?

15 A. Uh-huh.

16 Q. Towards the right there's a black circle.
17 Do you see that?

18 A. Yeah, the black circle.

19 Q. Do you know what that is?

20 A. I believe it was -- as I recall, it was for
21 resetting the display if it locked up.

22 Q. Above that on the front face there are
23 three little buttons or holes. Do you see those?

24 A. Uh-huh. Yes. I see those.

25 Q. Can you tell me what they are?

1 MR. ZELLER: This is asked and answered.

2 Q. (By Ms. Taylor) Can you tell me what they
3 are?

4 A. They were to indicate activity and the fact
5 that the device was turned on.

6 Q. To the left of that back onto the side of
7 it, it looks like there's a button. Do you see that?

8 A. I see it, yes.

9 Q. Do you know what that's for?

10 A. I'm not sure anymore. I would speculate
11 that it was for turning on the device and turning it
12 off.

13 Q. And to the left of that it looks like you
14 can see part of a chamber, and I think before you said
15 you didn't know what it was used for. Is that
16 correct? Do you know what it's used for?

17 A. It's --

18 MR. ZELLER: The question -- hold on. The
19 question, first of all, is compound.

20 THE WITNESS: Uh-huh.

21 MR. ZELLER: It purports to characterize
22 his testimony, which is not correct.

23 Q. (By Ms. Taylor) So can you tell me what
24 that chamber is used for?

25 A. All I can assume is that it was providing

1 access to the various chips in the device and that was
2 added by engineers who built the device.

3 Q. There's a line that runs horizontally along
4 the side of this device?

5 A. Uh-huh.

6 Q. Do you see that?

7 A. I'm assuming that probably --

8 MR. ZELLER: Hold on. There's not --
9 that's the only question she's asked.

10 Q. (By Ms. Taylor) Do you see the line?

11 MR. ZELLER: Yeah. Just asking if you see
12 that.

13 A. Yes, I do see that. Good point.

14 Q. (By Ms. Taylor) Do you know what that line
15 is there for?

16 MR. ZELLER: This is asked and answered now
17 repeatedly.

18 Q. (By Ms. Taylor) Do you know what that line
19 is there for?

20 A. I don't know. Probably two separate
21 components.

22 Q. I'm going to hand to you Exhibit 261.

23 A. We already did 261.

24 Q. I'm sorry. 262. Thank you.

25 (WHEREIN, Exhibit 262, Photograph, was

1 marked for identification by the Court Reporter.)

2 Q. (By Ms. Taylor) Can you tell me what's in
3 Exhibit 262?

4 A. Looking at the top of the Toshiba PDV
5 prototype. This is for a connection to a computer and
6 on the right side is the -- a connection for
7 headphones.

8 Q. In between those two there's a small dark
9 rectangle. Do you see that?

10 A. Uh-huh. I see it.

11 Q. Do you know what that is?

12 A. I have no idea what it is. You know, I
13 emphasize this is an engineering model, and engineers
14 put lots of things into engineering models that don't
15 result in a final product.

16 Q. I'm going to hand you Exhibit 263.

17 (WHEREIN, Exhibit 263, Photograph, was
18 marked for identification by the Court Reporter.)

19 THE WITNESS: I thought we did this before.

20 MR. ZELLER: Yes, we have.

21 THE WITNESS: Okay.

22 Q. (By Ms. Taylor) Can you tell me what's in
23 Exhibit 263?

24 A. We're looking at the -- what would be the
25 front of the Toshiba tablet, looking at it from the

1 Q. I asked if it would be on your CV, but I
2 don't think your CV --

3 A. No. The one I gave was -- I haven't
4 updated it since 2007, so --

5 Q. Okay.

6 A. I've done a lot of speaking since then too.

7 Q. If you go to the first page.

8 A. Okay. After the title page?

9 Q. Yes.

10 A. All right.

11 Q. Can you tell me what's on the first page?
12 Actually, let me -- this is 1981. They're not
13 numbered, so --

14 A. But the dates will be.

15 Q. A good indication. So it's the first page
16 that says 1981 in the upper left-hand corner?

17 A. Uh-huh.

18 Q. Can you tell me what that is?

19 A. This displays the mock-ups that I created
20 for the APME article that was published in 1981, and
21 these are drawings, two-dimensional drawings that
22 suggest what I thought a tablet might be like in the
23 future after 2000 with a newspaper displayed on the
24 display. The tablet that I've drawn, it has a thin
25 border with round corners.

1 Q. Do you have a file with this tablet on it?

2 A. I'm sorry?

3 Q. Do you have a computer file with this
4 tablet drawing on it?

5 A. Yes. Well, I have the -- yes, I have the
6 original article scanned.

7 Q. So did you scan that article and then put
8 it into these slides?

9 A. Yes. These are -- it's all from the --
10 scanned from the article.

11 Q. Do you still have the original artwork you
12 used when you created that article?

13 A. I did up until about a year ago, and gave
14 it to somebody to make copies of and then they managed
15 to lose it.

16 Q. Why were you giving it to someone to make
17 copies a year ago?

18 A. Because he expressed interest in wanting to
19 be able to do a story about it.

20 Q. Did that story ever happen?

21 A. No.

22 Q. Lost your article and --

23 A. And didn't do the story.

24 MR. ZELLER: So he didn't do the story and
25 he lost the drawings.

1 A. Right. He lost it before he did the story.
2 But I had -- fortunately I had made scans of it before
3 I gave it to him.

4 Q. (By Ms. Taylor) So let's go to the second
5 page that has the 1981 date on it.

6 A. Uh-huh.

7 Q. Can you tell me what that page is?

8 A. That's a scan of the complete page that
9 appeared in the APME special report that shows at the
10 top the images that I drew with cut lines explaining
11 what it is adjacent to it on the left side, and then
12 the story that accompanied those images.

13 At the time the article was written I was
14 director of design for the video text project that was
15 being developed by Knight-Ridder, and so described
16 on-line media as well as my vision for tablets within
17 that article.

18 Q. Did you say something about cut lines?

19 A. The cut lines are on the left side of the
20 front page image that's displayed on that page.

21 Q. What's a cut line?

22 A. A cut line, just a description of what
23 the -- what the two images are showing.

24 Q. How did you create the two images?

25 A. I'm sorry?

1 Q. How did you create the two images?

2 A. Since this was created in 1981 before the
3 tablet -- or any of the PCs were on the market, this
4 was all done by pen and ink and a paste-up of type
5 taken from the Miami Herald.

6 Q. And then did you take a photograph of that?

7 A. And then we photographed it, yes, made a
8 Velox of those -- which back in those days that's what
9 you did. There were no printers in those days.

10 Q. Made a what?

11 A. It's called a Velox. V-E-L-O-X.
12 Basically, you know, making a negative of the pages
13 and then having made on a special material, like a
14 plastic material.

15 Q. The next page has a date of 1988. Can you
16 tell me what that is?

17 A. In 1988 the Associated -- or the American
18 Newspaper or American Press Institute hosted a seminar
19 in Reston, Virginia and they created also a book on
20 "Newspaper Design 2000 and Beyond."

21 I was one of the designers and editors
22 invited to that symposium, and we were all asked to
23 come up with ideas for what we thought a newspaper
24 might be like after the year 2000.

25 I said -- in the 1980s I was doing a lot of

1 experimenting with ideas in addition to other work I
2 was doing for Knight-Ridder. At this point in time I
3 was exploring whether or not we could do pages of
4 newspapers that could be easily reduced and displayed
5 on a magazine-sized device with a touchscreen.

6 So these are -- these are the pages that I
7 showed at that time. There was a full article
8 obviously that I wrote, an essay I wrote about what
9 newspapers might be like.

10 Q. Did you ever create a prototype based upon
11 the images we see on this page?

12 A. Did I what?

13 Q. Create a prototype based upon the images
14 that we see on this page?

15 A. Other than I created these prototypes,
16 again, as -- as pen and ink and paste-ups of text, and
17 actually placed these pages inside of the white tablet
18 that I had to be able to show what it might be like
19 inside of a tablet.

20 Q. On the left side it says excerpts? I don't
21 know if that means excerpts.

22 A. Excerpts. There's an R missing. Good --
23 good catch.

24 Q. So is -- is that an excerpt from the
25 article?

1 A. It's from the article that was published
2 with these images and the book produced by the
3 American Press Institute called "Newspaper Design 2000
4 and Beyond."

5 Q. Okay. The next page is -- has a 1990 date
6 on it.

7 A. Okay.

8 Q. Can you tell me what that is?

9 A. Those are -- in the 1990 those are images
10 taken from the animated video that we saw earlier.
11 This was the video that was produced in collaboration
12 with RayChem.

13 Q. And is the tablet that was shown in that
14 video depicted in the screen in the lower left-hand
15 corner?

16 A. Uh-huh.

17 Q. Is it depicted in any of the other screens?

18 A. The only -- I only made four images from
19 the video. You see the tablet in the first frame just
20 behind the clock that says 4:30 a.m.

21 Q. I see it now, okay.

22 A. And then you see it in the second frame
23 immediately to the right of the clock upright within a
24 docking unit that -- that I anticipated would be used
25 for recharging the tablet and that that device would

1 be connected to an on-line service or the Internet and
2 be able to capture newspapers during the night, and
3 then when a tablet was placed into the docking unit it
4 would be recharged, and also the current issues of the
5 newspaper would be loaded onto the tablet while the
6 person is preparing coffee.

7 Q. Is it in the fourth image?

8 A. And in the lower left corner is an image of
9 a tablet. I had brought my white tablet with me, but
10 let the artist who did the animations have some
11 license in what he would do with it. So the -- I did
12 not instruct him to put buttons on it, but he did.

13 And -- and the pages, the page from Miami
14 Herald displayed there is one that I created and
15 reduced to fit on that size of display. And then on
16 the lower right corner is showing that the tablet
17 could be -- could fit easily into an attaché case.

18 Q. Okay. Let's go to the page with 1991 on
19 the top left corner?

20 A. Okay.

21 Q. Can you tell me what that is?

22 A. These are pages that I created while I was
23 at Columbia University as a fellow, and as I mentioned
24 earlier, developed a -- a database that would allow me
25 to simulate what hyperlinks would be like on pages so

1 that a person could touch one of the summaries of
2 stories on a front page or section front and go
3 directly to the story and display it on -- these were
4 all displayed on a Macintosh computer.

5 MS. TAYLOR: I'm -- I'm trying not to be
6 rude, but people at the office looked at these and I'm
7 checking to see if they had questions.

8 THE WITNESS: Oh, okay.

9 MS. TAYLOR: So I'm not just checking my
10 e-mail. All right. The next page -- oh, hold on.

11 Q. (By Ms. Taylor) Okay. So the next page
12 has two dates, 1992 and 1994?

13 A. Yes.

14 Q. Can you tell me what that page is?

15 A. 1992 and 1994. The image of me holding the
16 white tablet with one of the pages that I had created
17 while I was at Columbia University, that was actually
18 taken of me in I believe Australia at the time.

19 But I was using that to demonstrate the
20 vision that I was pursuing. And then 1994 we
21 developed the 1994 tablet and the video at the
22 Information Design Laboratory which I began showing
23 after that point.

24 Q. It looks to me like the white one on the
25 left has that little green dot in it?

1 A. Yes, that was '92. That would be at the
2 point at which when I went to Australia would be after
3 we had opened the Information Design Lab and I took
4 one of the newer ones with me. The old one was
5 starting to show a lot of wear.

6 Q. Is that the one that you -- the one that's
7 showing wear is the one you brought today?

8 A. Right. And the --

9 Q. And the other --

10 A. That's the one you've been seeing. The --
11 the one that's still in pristine condition is the one
12 I have at home.

13 Q. The next one is -- has a date of 1997?

14 A. 1997.

15 Q. Can you tell me what that is?

16 A. That's the cover of my book, and an
17 excerpt. Boy, I've got excerpts all the way through
18 there. Excerpt from chapter nine of my book that
19 included a scenario that described what I thought the
20 tablets might be like by the year 2010.

21 Q. At the top it says "Fidler includes
22 scenario for 2010 that includes an iPad-like tablet."
23 Do you see that?

24 A. Yes, uh-huh.

25 Q. Why do you say that?

1 A. Because the description I give of how they
2 would actually use a tablet and what it might be like
3 is what the iPad ultimately resembles.

4 Q. The next page has a date of 1999. Can you
5 tell me what that page is?

6 A. This was a follow-up to the -- I think the
7 1988 symposium that we had at the American Press
8 Institute, and at that point we were reviewing how we
9 had all done in predicting what would happen by the
10 year 2000, and they asked us to come up with our ideas
11 for what newspapers might be like in the year 2020.

12 And again, I continued to try to make the
13 point that I felt that digital publishing would be
14 dominant by 2020 and that most people will be reading
15 newspapers on a tablet device. And so this was my
16 prototype that I created for that publication in 1999.

17 Q. When you say prototype, did you create a
18 separate prototype in 1999 of a tablet?

19 A. No, I did not. That was using the -- by
20 that time I was using the 1994 tablet device which I
21 brought with me.

22 Q. So when it says tablet newspaper mock-up,
23 is that a mock-up of the display that went into the
24 1994 prototype?

25 A. Yes. It would be a page that I actually

1 did have I placed into that 1994 device or mock-up,
2 three-dimensional mock-up.

3 Q. Did you take that to this -- is it AP --

4 A. To the American Press Institute, yes.

5 Q. Yeah. And you displayed it there?

6 A. Uh-huh.

7 Q. The next page has the date of 2000 on it.
8 Can you tell me what that is?

9 A. When I went to Kent State the -- looking
10 for a newspaper to work with, Crain Cleveland Business
11 came to Kent State. We met with them. They asked me
12 actually to see if I could produce an electronic
13 edition, and so I took their publication, all of the
14 original content and produced a working version that
15 runs of course on a PC or Macintosh using Acrobat.

16 Q. So when it -- when you say newspaper
17 prototype, are you referring to a -- a physical object
18 like the prototypes you brought today?

19 A. I'm sorry.

20 Q. At the top of this it says, "First
21 complete, functional tablet newspaper prototype." Do
22 you see that sentence?

23 A. Right. Uh-huh.

24 Q. Are you referring to the type of prototypes
25 you brought with you today?

1 A. No. These were Acrobat-based prototypes
2 that ran on Macintosh computers, that we had no
3 tablets at that point in 2000 that could actually
4 display the product.

5 Q. We're just using prototype and mock-up for
6 so many things --

7 A. And people tend to use them
8 interchangeably.

9 Q. It's a little confusing. We want to make
10 sure we're clear. The next page has the year 2000 on
11 it.

12 A. Uh-huh.

13 Q. Can you tell me what that is?

14 A. This was Los Angeles Times funded our
15 research at that point just as -- I think just before
16 this Bill Gates had announced that he was -- had --
17 had a vision about tablets and was going to introduce
18 tablet PCs, and so the LA Times contacted me about
19 developing a national edition of the LA Times that
20 could be read on a tablet PC, and like the Crain
21 version, this one was created using Adobe Acrobat
22 software and this version included video and audio
23 layered content within individual pages and actually
24 functioned. It was all hyperlinked and ready to run
25 on a tablet as soon as one became available.

1 Q. Was this ever run on a tablet?

2 A. It was, yes.

3 Q. Which tablet?

4 A. Originally I had an HP tablet. That was
5 the first one that we were able to get. And then
6 ultimately used it on the NEC tablets that you saw.
7 And was demonstrated at the first tablet PC conference
8 in New York City.

9 Q. When was that?

10 A. Might be on my CV. Would have been
11 probably 2002. If my memory serves me, probably
12 spring of 2002. Just as the mark -- the tablet PCs
13 were coming on the market.

14 Q. I don't think I saw an HP tablet on your
15 wall of tablets in your office.

16 A. No, I left that in -- in Kent, Ohio.

17 Q. And was that the first tablet you had that
18 was functional?

19 A. That was the first functional tablet I
20 owned. And it was a slate version, a detachable from
21 a keyboard.

22 Q. And what -- do you know what -- what model
23 it was?

24 A. It was the very first one they had. I
25 don't remember the model now.

1 Q. Can you tell me what is on the next page,
2 which has the dates of 2002 and 2003?

3 A. Okay. When it became apparent that the Los
4 Angeles Times was not going to launch a national
5 digital edition of the LA Times, they had just done a
6 series of stories titled "Enrique's Journey," and I
7 decided that I would produce a -- I came up with the
8 idea of doing Newsbooks where we would take the series
9 of stories that ran I think in -- in six parts and
10 assemble that all as an e-book that could be displayed
11 on a tablet or on a -- on a laptop computer or any
12 computer for that matter. And -- and also included
13 audio.

14 That was the first Newsbook that I created.
15 The Rocky Mountain News "Dividing the Waters" in 2003
16 was the second Newsbook that I created, and then
17 created also Newsbooks for the -- other Newsbooks for
18 The Rocky Mountain News as well as for the Denver Post
19 and Los Angeles Times.

20 Q. Were these put on tablet computers?

21 A. These were all on tablet computers.

22 Q. Were they -- were they actually offered to
23 the public?

24 A. The --

25 MR. ZELLER: The question is vague as to

1 offered.

2 A. The Rocky Mountain News put it on its
3 website for people to download. For a number of
4 strange reasons the LA Times decided not to put it on
5 their website and -- and to put it on CDs, which I
6 hoped they would do for schools.

7 Q. (By Ms. Taylor) So they did put it on CD?

8 A. I burned CDs, but they never distributed
9 them.

10 Q. The next page has the date of 2003 only.
11 Can you tell me what that page is?

12 A. This was a -- a second prototype done for
13 the LA Times. Again, taking a complete issue of
14 the -- of the newspaper and developing advertising for
15 it that would have interactive elements and taking
16 advantage of the latest version of Adobe Acrobat.

17 At that point Adobe was also a sponsor of
18 my laboratory in helping to fund the laboratory, so we
19 were essentially pushing the envelope of Adobe
20 Acrobat. And again, displaying these on tablet PCs as
21 well as on laptop computers.

22 Q. The next --

23 A. They were all functional.

24 Q. And the next page is -- has the date of
25 2004?

1 A. '4. This was the beginning of the field
2 test. I created the first working version to
3 demonstrate the capability in November of 2004, and
4 based on that model I created and the templates that I
5 created in 2005 we launched the field test that ran
6 for ten weeks.

7 Q. Then the next page has a date range of 2005
8 to 2007. Do you see that?

9 A. Yes. That's the -- that's when we
10 essentially went from being a field test to actually
11 doing it live continuously. It ran for about a year
12 and a half. I taught graduate students how to use the
13 templates and how to produce the digital editions and
14 how to upload them.

15 We worked with OverDrive, company in Ohio
16 that does e-books. So the people could get access to
17 it, and it was -- we would do it on Saturday night.
18 It would be available very early Sunday morning.

19 Q. The next one has a date range of 2006 to
20 2010. Can you tell me what that one is?

21 A. Using templates that I had developed and at
22 that time developed automation software using
23 JavaScript in our lab in -- here at RJI, and we
24 produced every issue of the Global Journalist in a
25 digital format, which they even now still have up on

1 their website and can be downloaded today.

2 Q. What is the Global Journalist?

3 A. Global Journalist is a magazine that RJI
4 owned and was making available. They also have a
5 website, radio program. As of this year they have
6 stopped printing the magazine and we're now in
7 discussions about doing a digital-only magazine, but
8 it was circulated worldwide.

9 Q. Is RJI the Reynolds Journalism Institute?

10 A. That's correct. RJI is the initials that
11 we go by.

12 Q. On the left side --

13 A. Uh-huh.

14 Q. -- the cover of Global Journalist it looks
15 to me like it's something I saw on your office wall?

16 A. I'm sorry.

17 Q. It looks to me like there's something I saw
18 on your office wall. Is that one of the e-readers or
19 tablets we looked at?

20 A. Yes, it's the -- it's the iRex e-reader.
21 This was used to illustrate an article I wrote about
22 e-readers and newspapers.

23 Q. The next page of Exhibit 266 has a date of
24 2007.

25 A. Uh-huh.

1 Q. Can you tell me what that is?

2 A. At that time we were working closely with
3 iRex. They were helping provide us with their
4 e-readers to use for research. We bought a number of
5 them, and we used it during our experiment with the
6 eMprint Missourian editions and gave copies -- this is
7 where we actually set up focus groups where we brought
8 people in and gave them iRex e-readers to read the
9 newspaper on and to get their reactions to it.

10 Q. And is this iRex e-reader one of the ones
11 that's on the wall in your office?

12 A. It's on my wall. I also have a stack of
13 them on the other side of my office.

14 Q. You bought quite a few?

15 A. We bought twenty -- twenty of the
16 e-readers.

17 Q. Can they still be used?

18 A. Huh?

19 Q. Can they still be used?

20 A. Oh, yes. Uh-huh.

21 Q. How thick is it?

22 A. Okay.

23 Q. No, how thick is this one?

24 A. I'm sorry?

25 Q. How thick is this iRex?

1 A. It's relatively thin. The -- certainly not
2 more than a half-inch.

3 Q. All right. Next page, 2007 through 2010.

4 A. Continued to pursue the vision I had of --
5 of digital Newsbooks, and at that point I had formed
6 the Digital Publishing Alliance. We convinced -- or I
7 convinced a number of the newspapers, including the
8 New York Times, Washington Post to have us produce the
9 Newsbooks at RJI for free as part of their membership
10 in the Digital Publishing Alliance.

11 We established a store working with a --
12 another vendor where we sold Newsbooks to determine
13 what appeal they might have in the marketplace, and
14 based on what we -- what we learned determined that
15 there was a market for Newsbooks, and in fact
16 newspapers today are -- a number of newspapers are
17 doing Newsbooks today with Amazon and with other --
18 with other vendors and I think even with -- and I know
19 with -- with Apple with the iPad.

20 Q. All right. Can you tell me what is on the
21 final page, has a date of 2010?

22 A. That's showing me as a very happy camper
23 having just recently received my -- I received my iPad
24 on the first day it became available from a UPS driver
25 and anxiously waiting for it, and demonstrating it at

1 that point.

2 Q. What's behind the iPad that you're
3 holding --

4 A. Those are --

5 Q. -- in the picture?

6 A. -- e-readers and iRex devices.

7 Q. Is the item immediately behind your hand a
8 prototype?

9 A. Behind my hand is the iRex magazine-size
10 e-reader that actually -- they were selling those, and
11 then a variety of other e-readers, the Kindle, Sony,
12 and iRex.

13 Q. I know you're trying to get to dinner. So
14 you say here that this was -- that the iPad is the
15 first utilitarian tablet to realize your original
16 vision?

17 A. Yes.

18 Q. Why did the ones that came before it not
19 realize your original vision?

20 MR. ZELLER: That assumes facts not in
21 evidence. Go ahead.

22 THE WITNESS: How should I answer?

23 MS. TAYLOR: Go ahead and answer.

24 MR. ZELLER: I made an objection. I think
25 the question is objectionable.

1 A. Yes.

2 MS. TAYLOR: Leading.

3 Q. (By Mr. Zeller) It had four evenly rounded
4 corners?

5 MS. TAYLOR: Leading.

6 A. Yes.

7 MR. ZELLER: You really need to understand
8 what a leading question is. You obviously don't, so
9 you're just doing this to disrupt the deposition.

10 MS. TAYLOR: I don't --

11 MR. ZELLER: Do you want -- do you want
12 to -- should we bring out the federal rules and have
13 you read the definition of leading? Leading is one
14 that suggests the answer. If he can answer it yes or
15 no, that doesn't make it leading.

16 MS. TAYLOR: I don't --

17 MR. ZELLER: You need to understand what a
18 leading question is if you're going to interrupt the
19 deposition.

20 MS. TAYLOR: I do not need you to be
21 condescending and I do not need a speech.

22 MR. ZELLER: You need to -- you need to
23 consult the federal rules.

24 MS. TAYLOR: I am fully aware of the
25 federal rules. Move along, Counsel.

1 MR. ZELLER: Well, tell me how the question
2 suggests the answer? Let's read it back. You have it
3 there. Tell me how it suggests the answer.

4 MS. TAYLOR: Counsel, I'm not going to get
5 in an argument with you. Move along.

6 MR. ZELLER: That's because you have no
7 answer. So let's start over again so that I guess
8 she'll just continue to interrupt.

9 Q. (By Mr. Zeller) Please tell us whether or
10 not the Plexiglas mock-ups that were shown to the
11 survey respondents in February of 1997 at that first
12 table had an overall rectangular shape?

13 A. Yes.

14 Q. Please tell us whether it had four evenly
15 rounded corners?

16 A. Yes.

17 Q. Please tell us whether it had a flat clear
18 surface covering the front of the device?

19 A. Yes.

20 Q. Please tell us whether or not that flat
21 clear surface covering the front of the device was
22 without ornamentation?

23 MS. TAYLOR: Objection, vague.

24 A. It had no ornamentation.

25 Q. (By Mr. Zeller) It had no ornamentation?

1 Q. Well, let's focus on what -- what you
2 actually --

3 A. Uh-huh.

4 Q. -- put into tangible form --

5 A. Uh-huh.

6 Q. -- and I'll break it down.

7 A. Uh-huh.

8 Q. Did the drawings that you created back in
9 1981 showing the tablet design that you conceived
10 of --

11 A. Uh-huh.

12 Q. -- have any physical buttons?

13 A. There were no physical buttons.

14 Q. Did the physical three-dimensional mock-up
15 that you created of your tablet design in 1981 have
16 any physical buttons?

17 A. No.

18 MR. ZELLER: Thank you.

19 MS. TAYLOR: Okay. I have a couple more
20 questions.

21 THE WITNESS: Okay.

22 FURTHER EXAMINATION

23 QUESTIONS BY MS. TAYLOR:

24 Q. You were shown Exhibit 203?

25 A. I'm sorry?

1 Q. You were shown Exhibit 203?

2 A. Yes.

3 Q. When did you first see Exhibit 203?

4 MR. ZELLER: You can answer that. Just
5 don't -- don't describe the substance of
6 communications.

7 THE WITNESS: I understand.

8 MR. ZELLER: She's just asking when right
9 now.

10 Q. (By Ms. Taylor) I only want to know when.

11 A. The -- just the last few days when we first
12 met.

13 Q. What day?

14 THE WITNESS: My head is finally feeling
15 how long we've been here.

16 MR. ZELLER: It does seem longer.

17 A. I guess it was -- yeah, yesterday is when I
18 saw it.

19 Q. (By Ms. Taylor) Yesterday is the first
20 time you saw Exhibit 203?

21 A. Yesterday. Uh-huh. Uh-huh.

22 Q. Have you seen a design patent before?

23 A. Have I seen design patents? Yes.

24 Q. In what field?

25 A. Going back to 1994, the attorneys for

1 Knight-Ridder showed me a number of design patents and
2 we discussed whether or not we should try to have a
3 design patent on the tablet that I was designing, and
4 their decision was that there was nothing novel about
5 a rectangular-shaped device with round corners, so
6 they opted not to invest in a patent.

7 Again, here at -- well, actually, again, at
8 Kent State I was approached about whether or not Kent
9 State should consider a patent on the tablet vision
10 that I was pursuing, and the conclusion of the
11 attorneys was that there was nothing novel enough
12 about the concept to justify a design patent, and they
13 also argued that it was too easy for a design patent
14 to be altered and -- and difficult to defend.

15 In I think about four years ago here at
16 University of Missouri I was approached again about is
17 there anything that I have created with a tablet and
18 my vision of a newspaper on a tablet that the
19 University of Missouri could patent, and we spent
20 several weeks analyzing my work, and the decision was
21 that I've already put it in the public domain and that
22 while they could probably get a patent approved, that
23 it would probably be impossible to defend. And so
24 they decided not to invest in a patent.

25 Q. My question is whether you'd ever seen any

1 design patents?

2 A. Oh, okay. I'm sorry for -- I'm sorry. My
3 head is starting to go.

4 Q. It's late in the day.

5 A. But yes, I have seen other examples of
6 design patents, but not specific to my -- my work.

7 Q. Okay. Did you ever on the 1994
8 prototype --

9 A. Uh-huh.

10 Q. What are those cards called -- cards
11 called, PCM- --

12 A. PCMCIA card.

13 Q. PCMCIA?

14 A. It's a PC memory --

15 Q. PCMI -- again?

16 A. PCMCIA.

17 THE WITNESS: Do I have that right, Mike?
18 Mike, you were looking up too. It's a PCMCIA; is that
19 right?

20 MR. SADOWITZ: That's correct.

21 Q. (By Ms. Taylor) Okay. Did you ever build
22 a prototype where the PCMCIA cards were inserted and
23 flush to the surface?

24 MR. ZELLER: You're talking about the 1994
25 design?

1 MS. TAYLOR: Yes.

2 A. All of the prototypes were exactly like
3 this, and as I explained, the reason was that I had to
4 have a way of easily getting those cards out. So the
5 assumption was that they would be flush at the point
6 at which there was a mechanism that would make it easy
7 to extract the cards.

8 Q. (By Ms. Taylor) When you were doing the
9 mall intercept survey work at Kent State in 1997 --

10 A. Uh-huh. Uh-huh.

11 Q. -- you were using what we have marked as
12 Exhibit 267; is that right?

13 A. Correct. Uh-huh.

14 Q. Did you show the respondents any other
15 Plexiglas shapes other than 267?

16 A. No. They were all the same shape.

17 MR. ZELLER: I'm sorry. You're talking
18 about that first table, though.

19 THE WITNESS: Uh-huh. Right.

20 Q. (By Ms. Taylor) I'm talking about 267 --

21 A. Yeah.

22 Q. -- the Plexiglas shape.

23 A. That was the shape we showed them.

24 Q. Okay. And then you also showed them what
25 we've marked at -- as 268 and 269 at a second table?

1 A. Uh-huh.

2 Q. The article Portrait vs. Landscape, which
3 is Exhibit 248 --

4 A. Uh-huh. Uh-huh. Correct.

5 Q. -- is that based upon that research that
6 you did?

7 A. Based on that research, yes.

8 Q. Was it based upon anything -- did you do
9 any other research for purposes of this art -- this
10 article that's Exhibit 248?

11 A. Well, I have done further research on
12 portrait versus landscape, but nothing was printed
13 about it.

14 Q. Prior to when you wrote Exhibit 248, did
15 you do any other research?

16 A. Prior to that, no.

17 Q. So the only research that you did that led
18 to this article, Exhibit 248, involved Exhibit --
19 involved the mall intercept survey that you did in
20 1997?

21 A. Correct.

22 Q. And the only shapes that the individual
23 respondents at the mall saw were Exhibits 267, 268,
24 and 269?

25 A. Yes.

1 Q. Okay. What's a thin form factor?

2 A. I'm sorry, what is --

3 Q. What is a thin form factor?

4 A. Anything that I consider less than an inch
5 in thickness.

6 Q. And Mr. Zeller was asking you about your
7 Toshiba nondisclosure agreement.

8 A. Uh-huh.

9 Q. Is that still in place?

10 A. I'm sorry?

11 Q. Are you still under -- under the -- are you
12 still bound by the terms of the nondisclosure
13 agreement?

14 A. No.

15 MR. ZELLER: Wait a minute. Let me just
16 interpose an objection before you answer --

17 THE WITNESS: Uh-huh.

18 MR. ZELLER: -- which is you can give your
19 understanding, but I object to the extent it calls for
20 a legal conclusion.

21 Q. (By Ms. Taylor) And I'm only asking your
22 understanding.

23 A. My understanding, and when the two people
24 came from Toshiba with the tablet that they presented
25 to me, that the NDA no longer applied.

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 CITY OF ST. LOUIS)

5 I, William L. DeVries, a Certified Court
6 Reporter (MO), Certified Shorthand Reporter (IL),
7 Registered Diplomat Reporter, Certified Realtime
8 Reporter, and a Notary Public within and for the State
9 of Missouri, do hereby certify that the witness whose
10 testimony appears in the foregoing deposition was duly
11 sworn by me; that the testimony of said witness was
12 taken by me to the best of my ability and thereafter
13 reduced to typewriting under my direction; that I am
14 neither counsel for, related to, nor employed by any
15 of the parties to the action in which this deposition
16 was taken, and further that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties thereto, nor financially or otherwise
19 interested in the outcome of the action.

20 _____
21 Notary Public within and for

22 The State of Missouri

23 Dated September 24th, 2011

24
25 My commission expires August 14, 2015.

1 STATE OF)

2)

3 COUNTY OF)

4 I, ROGER F. FIDLER, do hereby certify:

5 That I have read the foregoing deposition;

6 That I have made such changes in form and/or
substance to the within deposition as might be
necessary to render the same true and correct;

7 That having made such changes thereon, I hereby
subscribe my name to the deposition.

8 I declare under penalty of perjury that the
foregoing is true and correct.

9
10
11 ROGER F. FIDLER

12 Executed this 24th day of September,
13 2011.

14
15
16 Notary Public:

17 My Commission Expires:
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WITNESS ERRATA SHEET

Witness Name: ROGER F. FIDLER

Case Name: APPLE, INC., a California corporation vs.
SAMSUNG ELECTRONICS CO., LTD., a Korean business
entity, et al.

Date Taken: SEPTEMBER 23, 2011

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Witness Signature: _____